

M. Morris

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SUNDRY
RESOLUTIONS AND PROCEEDINGS,
IN
CASES
BEFORE THE
Board of Commissioners,
FOR CARRYING INTO EFFECT
THE SIXTH ARTICLE
OF THE
TREATY
OF
AMITY, COMMERCE AND NAVIGATION,
CONCLUDED BETWEEN
HIS BRITANNIC MAJESTY
AND
THE UNITED STATES OF AMERICA.

PHILADELPHIA:

PRINTED BY R. AITKEN, No. 22, MARKET STREET.

1799.

CHURCH

RESOLUTIONS AND PROCEEDINGS

CHURCH

Board of Church Officers

THE CHURCH OF CHRIST



THE CHURCH

AND

NAVY, COMMERCE AND NAVIGATION

CONSTITUTION

HIS BRITANNIC MAJESTY

AND

THE UNITED STATES OF AMERICA

WHICH

THEY HAVE ADOPTED

THE

COMMISSIONERS' OFFICE,
Philadelphia, 10th July, 1797.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

The Board laid down the following rules, viz:

CLAIMS will only be received from the claimant in person, or from some agent appointed by him, and in every case the person presenting the claim shall be informed that his attendance will be required.

Every claim shall be read by the secretary, and the first object of deliberation shall be whether it is within the meaning of the 6th article of the treaty between Great Britain and the United States.

If the Board shall determine that such claim is not within the meaning of the said 6th article, the party presenting the same shall be informed, and the said claim with the vouchers thereof shall be returned.

In every case where the claim is entertained as within the treaty, notice thereof shall be given to the attorney-general of the United States. A record of each claim,

claim, the time when presented and a list of the papers accompanying it, shall be kept by the secretary.

On the application of the attorney-general of the United States, by himself or the public agents appointed by law, the original papers respecting each claim shall be delivered to him, and a receipt taken for the return of such papers within eight days.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 6th Nov. 1797.

PRESENT, AS BEFORE.

The following amendment and explanation of one of the rules laid down by the Board on the 10th day of July last was adopted, viz :

THAT on the presenting and reading of every claim or complaint the Board will either immediately or upon farther consideration reject it on its own statement, if it shall appear not to contain matter entitling it to be entertained by the Board, or will require some additional statement or explanation, or will order notice of such claim to be served upon the attorney-general or agent for the United States, that the same may receive an answer on their part within a limited time ; but that an order for the service of such notice shall not be considered as implying any opinion or declaration that the case is within the meaning of the treaty.

Extracted from the proceedings of the Board.

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G. EVANS, SECRETARY.

COMMISSIONERS'

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COMMISSIONERS' OFFICE,

Philadelphia, 6th Nov. 1797.

PRESENT, AS BEFORE.

ORDERED—That in every case, on the presentment of a claim by an agent, a power of attorney shall either be produced at the time of presenting the claim, or pending the consideration thereof, and that notice be given to the agent accordingly, in order that such power of attorney if not then produced may be procured as soon as possible.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 8th Dec. 1797.

PRESENT, AS BEFORE.

ORDERED—That the general agent for claimants, and the agent for the United States be informed, that in all cases where claimants can produce evidence respecting the solvency of their debtors during the operation of the lawful impediments complained of, the Board will expect to have such evidence stated and laid before them, without prejudice however to the right of the claimants to maintain, that it is not incumbent on them to prove such solvency.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 11th Dec. 1797.

PRESENT, AS BEFORE.

ORDERED—That all applications for the examination of witnesses shall be lodged with the secretary in writing, signed by the agent of the party by whom they are to be adduced; and shall state not only the names of the witnesses, but the points generally on which they are to be examined; and that a copy of such application shall at the same time be delivered to the agent for the opposition party.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 26th Jan. 1798.

PRESENT, AS BEFORE.

RESOLVED—That no claim or complaint, shall be considered as barred by the limitation of time in the treaty, if a memorial containing the full demand has been duly presented to the Board within the time thereby prescribed, although such proceedings at law as may from the circumstances of the case be necessary for the purpose of obtaining evidence in support of the same, or any part thereof, have not been completed within the time so limited; but that all possible dispatch and diligence in commencing and completing such proceedings will in every case be expected by the Board.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

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COMMISSIONERS' OFFICE,

Philadelphia, 18th April, 1798.

PRESENT, AS BEFORE.

ORDERED—That no pleadings in cases before the Board, shall in future be printed till after the manuscripts has been laid before them.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 18th April, 1798.

PRESENT, AS BEFORE.

In the Case of WILLIAM CUNNINGHAM, and others.

THE answer of the United States, signed by their agent, having in this case been printed and laid before the Board. **ORDERED**—That the general agent for claimants, or attorney for these claimants, have leave to see and reply to the same within three weeks; but with the exception of the introductory argument, "to impress on the commissioners (as it is there said) the primary importance of understanding the limits" of their duty, and instructing them, on the authority of Vattel, and with reference to a supposed case, of manifest and intentional wrong, in the expediency of taking care, that they do not "renew the dissensions between the two nations," by deciding in a manner so palpably "*absurd*," or so clearly proceeding from "*corruption or flagrant partiality*," as to entitle "*either nation to disregard the award*." The Board make no further animadversion on the above argument than thus to state its impore, and prohibit all allusion to such topics in future. They know no policy but that of justice, and look forward to no consequence but the consciousness of having done their duty.

ORDERED

(8)

ORDERED—That the reply in this case be printed; that this order be therein fully recited, and copies hereof served upon the agents for both parties.

Extract from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 21st May 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMMONS,
Mr. INNES, AND
Mr. GUILLEMARD.

In the Case of the Right Rev. CHARLES INGLIS.

The Board having resumed the consideration of this case, came to the following resolutions, viz.

RESOLVED—That the claimant's character of British subject was not affected or impaired by the act of attainder and confiscation, passed by the State of New York on the 21st of October 1779, attainting him with the Earl of Dunmore, Governor Tryon, Sir, Henry Clinton and many other British subjects who are therein described, not as subjects of the State, but, as "persons holding or claiming property within the State;" and forfeiting and confiscating their whole estates real and personal for their adherence to his Britannic Majesty: But that on the contrary, the said act of attainder and the description of loyalist or refugee applied



applied to the claimant, on the part of the United States, in consequence of his said adherence, are conclusive evidence that he still maintained his original allegiance:—that therefore he is entitled to claim before this Board, under the 4th article of the definitive treaty of peace, and the sixth article of the treaty of amity between his said Majesty and the United States.

RESOLVED—That the confiscation of the debts in question before the peace is no bar to the claim; and that the Board have so determined upon the same grounds and principles of interpretation respecting confiscations before the peace, which were adopted and declared by the judges of the United States when (in the case of Hamilton's against Eaton) they decided in their circuit court for North Carolina district, that debts due to British subjects who resided in the province now State of North Carolina at the date of the Declaration of Independence and continued there to reside till the 20th day of October 1777, when they were obliged by law either to take an oath of abjuration and allegiance to the State or to depart; and which debts had been confiscated or forfeited to the State before the peace, were nevertheless due and owing by virtue of the treaty.

RESOLVED—That the terms of the said 4th article of the definitive treaty of peace, are in themselves plain, explicit and unambiguous; and do not require or admit of any construction or explanation from the 5th article, to which the 4th article bears no relation whatever.

ORDERED—That the general agent for claimants and the agent for the United States be furnished with copies of the foregoing resolutions.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 28th May, 1798.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS.

Mr. GUILLEMARD.

In the Case of CHARLES INGLIS.

ORDERED—That the agent for the United States have leave on or before the first day of June next, to shew cause why the act of attainder and confiscation passed by the State of New York, against the claimant before the peace, and the other acts of that State subsequent to the peace, with the statement given on the part of the United States, of their operation and effect as necessarily divesting the claimant of all right at law, ought not to satisfy the Board that at law he could not recover, and why the additional expence and delay of resorting to a course of judicial proceedings, by which the eventual loss might be greatly increased, should now be incurred.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 1st June, 1798.

PRESENT, AS BEFORE.

In the Case of INGLIS.

An argument on the part of the United States, pursuant to the order or rule to shew cause of the 29th ultimo, having been read,

RESOLVED—That the said order has been misunderstood ; the question being, whether there is good ground *by the law of the land*, and not under any resolution

resolution of the Board (which cannot affect the law of the land or the courts of justice) for now proceeding judicially in the recovery of the debt on which the claim is founded.

Therefore, ORDERED—That the agent for the United States have leave, on or before the 6th current, to add to the argument which has been read, what he may think material on that question.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 4th June, 1798.

PRESENT, AS BEFORE.

In the Case of INGLIS.

THE Board having observed from the argument read at the last meeting on the part of the United States, that the word "interpretation" made use of in the resolution of the 21st May last, wherein they refer to the principles of interpretation respecting the confiscation of debts before the peace, which were declared by the judges of the United States in the case of Hamilton's against Eaton, has been misunderstood.

RESOLVED—For the prevention of future argument on that misapprehension, that in adopting the word *interpretation*, the Board had in view the proper sense of the word, namely—the meaning of the article as to the right thereby given to British creditors, notwithstanding such confiscation of their debts without deciding (upon the operation of that article) whether it did or did not, of itself, repeal the existing law of particular States.

ORDERED

(12)

ORDERED—That both the agents be furnished with copies of the foregoing resolution.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 11th June, 1798.

PRESENT, AS BEFORE.

ORDERED—That the agent for the adverse party shall have leave to see every paper, in every case before the Board, though there may be no special order for that purpose or for any answer thereto.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 15th June, 1798.

PRESENT, AS BEFORE.

ORDERED—That where an agent does not intend to take the benefit of an order for leave to put in any paper or argument before the Board, notice be given to the Board to that effect without delay.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 9th July, 1798.

PRESENT, AS BEFORE.

THE agent for the United States having represented to the Board the difficulties he labours under in his enquiries for want of a competent knowledge of the places of residence of the debtors,

ORDERED—That the claimants specify as well the State as the county, town or place where the debtor resided at the time the debt was contracted, and if now living, their present places of residence, or if dead the names and places of residence of their heirs or representatives, as far as these particulars may be known to the said claimants or their agents.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 13th July, 1798.

PRESENT, AS BEFORE.

In the Case of STRACHAN *and* M'KENZIE.

RESOLVED—That the laws of the State of South Carolina passed subsequent to the peace, and known under the denomination of the *instalment laws*, were lawful impediments to the recovery of debts, secured by the treaty of peace, and in this case operated as such, within the meaning of the sixth article of the treaty of amity.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 16th July, 1798.

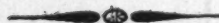
PRESENT, AS BEFORE.

RESOLVED—That till the answer to a claim has been put in and laid before the Board, raising a question of fact between the parties, no application can in common course, or without very special reasons be received for leave to examine witnesses against such claims.

ORDERED—That all applications out of the ordinary course of proceeding before the Board, shall state specially the grounds on which they are made, and meant to be supported; and when the urgency of circumstances renders it necessary to make any such application between the sittings of the Board, that a copy thereof be forthwith sent to each commissioner as well as the agent for the adverse party.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.



COMMISSIONERS' OFFICE,

Philadelphia, 23d July, 1798.

PRESENT, AS BEFORE.

ORDERED—That agents shall in every case make their enquiries, and inform themselves fully as to all the material facts as soon as possible, after the case comes before the Board, and that every application for leave to examine witnesses at a distance from where the Board is sitting at the time, shall set forth by *special averments*, the precise facts on which such an examination is proposed, the names and places of residence of the witnesses to be adduced, the circumstances on which each of them can give testimony, and their means and opportunities respectively,

respectively, of speaking from their knowledge; on which application (to be styled *special averments for evidence*) the Board trusting that agents will not make averments without good reason to believe they can be substantiated, will consider the relevancy of such averments, and either order such examination to take place before themselves, or authorize the same to be taken at a distance, on special interrogatories to be settled by the Board, and under such directions as the case may require.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 6th Aug. 1798.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMMONS,

Mr. GUILLEMARD.

In the Case of CUNNINGHAM & Co.

RESOLVED—That in the State (formerly province) of Virginia, the recovery of debts due to British subjects was prevented by the war, and the operation of various lawful impediments which arose or were created during the course of the war, or immediately preceding the same. That after the peace, to wit: On the 22nd day of June 1784, and before the expiration of certain acts of the State passed during the war, against the recovery of British debts, which were of limited duration, and which it is admitted did not expire till the month of July 1784, a *resolution* was passed by the legislature in the general assembly of the said State

State of Virginia, whereby it was **RESOLVED**—"That so soon as reparation should be made for an infraction of the treaty of peace therein charged against Great Britain, or congress should judge it indispensably necessary; such acts of the legislature passed during the war as inhibited the recovery of British debts, ought to be repealed; and payment thereof made *in such time and manner as should consist with the exhausted situation of the commonwealth.*" That by the above resolution the legislature of Virginia did in substance declare, that the State was not bound to give effect to the treaty of peace; that laws against the recovery of British debts did then exist; that notwithstanding the 4th article of the said treaty such laws should continue to exist in their utmost extent till certain conditions were fulfilled; and that even then, such laws should only be so far repealed as to enable British creditors to recover payment of their debts in such manner as might be found most convenient for the commonwealth. That on the 12th day of December 1787, an act was passed by the said general assembly of the State, whereby it was enacted, "That such of the acts or parts of the acts of the legislature of the commonwealth, as had prevented or might prevent the recovery of debts due to British subjects according to the true intent and meaning of the treaty of peace should be repealed." But with an express proviso that such repeal should be *suspended* "until the governor with the advice of council should by his proclamation notify to the State, that Great Britain had delivered up to the United States the posts therein occupied by British troops, and the negroes alleged to have been taken away contrary to the treaty, or had made such compensation for them as should be satisfactory to congress." That although Great Britain has delivered up the said posts to the United States, agreeably to and in compliance with the second article of the treaty of amity, the said negroes have not been delivered up nor compensation made as prescribed by the said act of the State of Virginia, and the said treaty of amity contains no stipulation for that purpose. That as the existence of lawful impediments in the State of Virginia, to the recovery of British debts notwithstanding the treaty of peace, was thus repeatedly declared and their operation recognized and enjoined by the highest authority in the State, so it appears from the records of adjudged cases, subsequent to the adoption of the present constitution of the United States which have been laid before the Board, with a reference to known and general practice, that judgments for the defendants were accordingly given in the courts of law, on the pleas of *British debt* and the *statute of limitations*. And that it is stated by the present Chancellor of Virginia "distinguished (as in the answer for the United States he is described to be) for his probity, learning and experience," and whose reports, containing the passage now to be recited have been produced and referred to by the agent for the United States, "That some months before" the 3d day of May 1793, the doctrine "*That an American citizen might honestly as well as profitably withhold money which he owed to a British subject,*" was received in a court of justice in Virginia, with "*conviction*" and applause. That the adjudged cases of which the records have been laid before the Board, in evidence of the said reference to the general practice of the courts are the following,

to wit: A judgment of the court of quarter sessions held for Lancaster county in the said State of Virginia, on the 19th day of March 1788, in an action in which *Warwick* administrator was plaintiff and *Gaskins* defendant, which judgment is in these words, "On this day came the parties by their attornies, and upon hearing the arguments that were offered by the said attornies, and all matters of law arising thereupon the court are of opinion that this suit be dismissed, it appearing to the court to be a British debt. A judgment of the county court of Prince George on the 12th day of August 1791, in an action in which Gibson Donnaldfon and Hamilton were plaintiffs and Bannisters executors were defendants; and which judgment is in these words, "And now at this day came the parties by their attornies, and it appearing to the court that the plaintiffs or some of them are British subjects this cause is ordered to be dismissed." A judgment of the circuit court of the United States for the middle circuit in the Virginia district, held at Richmond, in the said district on the 1st day of June 1797, in an action for a debt due on the 22d day of May 1775, brought into court on the 22d day of November 1793, in which *Henderson's* surviving partners of *Glasford and Henderson* were plaintiffs and *Bunbury's* executors were defendants, and to which the defendants pleaded first the general issue, and secondly the statute of limitations, to which second plea the plaintiffs replied as follows, to wit: "And the plaintiffs by their attorney say as to the second plea by the defendants aforesaid pleaded that they ought not to be precluded from having and maintaining their said action against the defendant, because they say, that from and after the 4th day of July in the year 1776, until the 3d day of September 1783, there was open war between the United States of America, whereof the defendant was a citizen and the king of Great Britain to whom the plaintiffs were subjects; and that the various laws of the State of Virginia prohibited the recovery of the demand in the declaration mentioned." But the said second plea was adjudged to be good. A judgment of the county court of Prince William county on the 8th day of August 1797, in an action brought into court on the 4th day of August 1795, for a debt due on the 2d day of December 1775, in which *William Cunningham and Co.* were plaintiffs and *Purcil* administratrix was defendant, and in which there was a verdict for the defendant on the direction of the court that the demand was barred by the statute of limitations. And a judgment of the district court composed of the counties of Prince George, Sussex, Dinwiddie, Hallaway and Amelia, on the 16th day of April last in an action for a debt due on the 16th day of January 1776, brought into court on the 27th day of April 1796 in which *William Cunningham and Peter Murdoch* described as subjects of the king of Great Britain were plaintiffs, and *Sturdivant's* executor was defendant, and in which the statute of limitations was pleaded, the 4th article of the treaty of peace stated in reply, and on demurrer the plea adjudged to be good. To all which evidence of the existence and actual operation of lawful impediments to the recovery of British debts, nothing has been opposed but an averment that the legislature of the State of Virginia were ignorant of their own laws; and an argument to prove that according to the theory of the law, and constitution of the United States, such legislative acts ought not to have passed, nor such judicial decisions to have been given.

RESOLVED—That so far as the full recovery of the debts in this case claimed, has, during the operation of the said lawful impediments been delayed, and the value and security thereof impaired and lessened, or totally lost, by lapse of time, the loss of legal evidence, insolvency of debtors or otherwise; such delay of recovery and diminution, or loss of value and security are to be ascribed to such operation of lawful impediments; unless it be shewn within the provision of the treaty of amity, that such delay of recovery and diminution or loss of value and security were occasioned by other causes which would equally have so operated if the said lawful impediments had not existed, or arose from the manifest delay or negligence or wilful admission of the claimant.

RESOLVED—That no part of the debts in question which are classed or described as “doubtful” in the lists referred to in the memorial, and which are stated to have been so described in the year 1775, and not alledged to have since become good, can be the subject of claim before this Board.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 6th August, 1798.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. GUILLEMARD.

In the Case of D. DULANY.

The Board resumed the consideration of the resolution which was proposed in this case on the 13th day of June last, and had been the subject of frequent conference and deliberation; and the same was passed as follows:

THE Board having considered the pleadings in this case, and particularly the additional argument on the part of the United States in consequence of the order

order dated the 7th day of May last; suggesting to their agent certain points and principles for further discussion, to which order reference is now had.

RESOLVED—That the claimant, Daniel Dulany, a British subject, became immediately on the death of the testatrix Ann Tasker, as residuary legatee under her will, entitled to, and creditor in equity, in all debts due to the said testatrix at the time of her death—that depreciated paper money was at different times during the war tendered to the executor under the will in payment of certain debts so due; which depreciated paper was received by the said executor in obedience to an act of the general assembly of the State of Maryland, passed in April 1777, whereby it was enacted that the paper money therein mentioned should be “received in payment” and discharge of all manner of debts;” and that if a creditor refused to receive such paper money when tendered in payment and discharge of his debt, the whole debt and demand should be “*for ever extinguished*,” the bond or other voucher of the debt delivered up, or a discharge given to the debtor who might sue the creditor for damages to the amount of the debt with costs of suit, if on refusing the tender he also refused on demand to deliver up the bond or other voucher of debt, or to give such discharge to the debtor—That the act of an individual in obedience to a peremptory law is the act of the law itself. That in every such case of tender the extinction of the debt at law was by act and operation of law, which it was not in the power of the creditor either to promote or prevent; for whether he received the tender and obeyed the law, or refused and disobeyed, the debt was thereby immediately extinguished. That the Board are bound to award relief wherever the right is good in justice, and the remedy without fault in the creditor is gone at law. That the existence in this case of the creditor’s right in justice to the extent of all that has been withheld of a fair debt, has not been made the subject of dispute; but his remedy at law has been lost by his obedience to law; and therefore it is maintained that the nation is not bound to relieve. That it is incumbent on every individual, whether alien or citizen to yield obedience to the authority under which he lives at the time, so far as that obedience is not directly inconsistent with prior duties, nor is it a doctrine to be admitted in any case that a nation has a right to complain of an individual for having obeyed their laws; or under an agreement to allow compensation for certain losses arising from their operation to refuse such compensation because those laws have so operated and were obeyed. That disobedience to the law could in this case have proceeded from no rational inducement; for without enquiring whether as is alledged, the courts of justice did afterwards and subsequently to the peace in many instances of tender and refusal, defeat the operation of the above law by taking advantage of defects in form, so as that the creditor “might have recovered (as it is said on the part of the United States) the whole from the debtor, the principal as well as the interest to which justice would have entitled him” it is sufficient that no motive could arise from events which had not then happened; while refusal of tender in disobedience of the law; and in circumstances which gave no preface of favor in such cases, and when “the doctrine of tender it is said was little understood,” would have deprived the creditor of an immediate satisfaction, in part subjected him

him to a judgment and execution for damages to the extent of the whole debt, with costs of suit, and exposed him to all the hazard of personal inconvenience, which in such times and circumstances is necessarily incident to the open and avowed breach and contempt of positive law. That therefore the amount of what remains unpaid of the full value in sterling money of the debts in question, as secured against the operation of lawful impediments by the 4th article of the treaty of peace, is a loss which arose from the act and operation of law, still impeding and preventing the attainment of remedy in the ordinary course of justice, and as such the proper subject for claim for compensation under the 6th article of the treaty of amity.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.



COMMISSIONERS' OFFICE,

Philadelphia, 6th Aug. 1798.

PRESENT, AS BEFORE.

In the Case of D. DULANY.

RESOLVED—That in order to prevent as much as possible the inconveniencies which must arise from erroneous impressions of the principles entertained or adopted by the Board in the interpretation of the treaties, more especially when such erroneous impressions are produced by the publication of printed arguments, it becomes them to declare that the first point suggested for further argument in this case by the order of the 7th day of May last, referred to in the above resolution, and which point is in these words, “ Is it not therefore clearly understood by
 “ both parties, as a principle, *that a discharge or extinction of the debt at law before
 “ the treaty is not of itself a bar to the remedy thereby provided; but that it must also
 “ appear to have been such an extinction and discharge as proceeded from the free
 “ concurrence and voluntary act of the creditor, and not from the effect and operation of law; such operation of law, in bar of all legal remedy, being on the
 “ contrary*

"contrary relied on as the main foundation of a right to claim under the treaty?" is altogether misrepresented in the following answer laid before the Board, and printed on the part of the United States. "But the agent for the United States does not admit that it was ever understood by him or by the United States as a general 'principle that the discharge or extinction of the debt at law before the peace was a legal impediment which the treaty of peace removed,' and consequently that every adjustment and payment between the debtor and creditor, before that period, was liable to be re-examined and unsettled. On the contrary, the agent denies such a principle, and contends that the Board has no power to make examination into any matter that has been settled by the debtor and creditor according to the laws of the land." That the following words in the above passage, viz. "principle that the discharge or extinction of the debt at law before the peace was a legal impediment which the treaty of peace removed," are printed in the said answer with full marks of quotation as if not only the substance but the very terms made use of in the order had been therein faithfully given; whereas every word of the latter part of the sentence is a misquotation, tending to support the conclusion imputed to the Board, but totally different from and in part precisely the reverse of the plain proposition they expressed. For the Board have never suggested or given any reason to ascribe to them the opinion either that the validity of "payments accepted by the creditors whether in paper money, in lands, in houses, in public securities, or in any other commodity to which both parties the creditor and debtor had agreed is questionable," as stated in the first paragraph of that printed paper. Or "that every adjustment and payment between the debtor and creditor before the peace is liable to be re-examined and unsettled," as stated in the paragraph before recited. Nor have any such propositions ever been maintained before them.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 8th August, 1798.

PRESENT,

Mr. MACDONALD,

Mr. FITZSIMONS,

Mr. GUILLEMARD.

In the Case of DANIEL DULANY.

Mr. Fitzsimons read in his place his protest against the proceedings in this case at the last meeting, as follows, viz :—

ON Monday the 6th instant the Board proposing to take up a resolution upon the claim of Daniel Dulany, whereby the right of the claimant to compensation for depreciation on payments made to his representative during the war, is recognized, notwithstanding the debts for which such payments were made were at the time finally settled and the evidence thereof given up or cancelled.

It was objected to on my part that such a claim ought not to be entertained by the Board, because neither the words nor the spirit of the treaty would warrant the construction, that payments thus made could now be set aside, or be considered as legal impediments. That rather than give countenance to a resolution which (in my opinion) was so manifestly unjust, I should withdraw from the Board to prevent its adoption ; (a determination I had explicitly expressed when the same resolution was before under consideration) being asked however to hear the resolution read and without the smallest expectation that after my declaration the other members would consider me as present to this purpose I remained in my place, after the secretary had finished the reading (and some observations had been made by a member of the Board purporting that I had not a right to withdraw) I heard with infinite concern an order given to him, to enter it as agreed to ; and to furnish copies to agents as in other cases.

Under these circumstances it becomes my duty to protest against the validity of the said resolution which I do not consider as having passed the *Board*, and I request that the agent for the United States and the agent for claimants be furnished with a copy of this statement and declaration.

(Signed)

THOMAS FITZSIMONS.

August 8, 1798.

The

The above being read, Mr. Guillemard and Mr. Macdonald represented, that after the reading of the resolutions, and after observations had been made as above, the question was distinctly put and Mr. Macdonald, Mr. Rich and Mr. Guillemard gave their assent, the one after the other to the passing of the resolutions, on which the secretary was desired to enter them as passed, Mr. Fitzsimons still continuing in his place, and that the whole business was done deliberately, it having been settled on Wednesday the first day of August, that it should be taken up on the Monday following.

Extracted from the proceedings of the Board,

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 8th Aug. 1798.

PRESENT,

Mr. MACDONALD,

Mr. FITZSIMONS,

Mr. GUILLEMARD.

In the Case of CUNNINGHAM and Co.

Mr. Fitzsimons read in his place his dissent from the resolutions agreed to in this case at the last meeting, as follows, viz :—

THE resolutions passed by the Board in the case of Cunningham and Co. containing as I believe, principles inconsistent with the true intent and meaning of the treaty under which we act—I desire to enter my dissent from them on the following grounds :

1st.

1st. Because the proofs before the Board are not sufficient to warrant the conclusion, that lawful impediments to the recovery of British debts existed *generally* in Virginia.

The records of judgments in two cases in county courts, and the acts and resolutions of the legislature, are cited, with a reference to the general practice of the courts; but it is alledged on the part of the United States, that judgments in numerous instances were obtained in the courts of Virginia by British creditors, that no appeal was ever carried up from the lower to the higher courts where the judgments might have been corrected; and that it was incumbent upon the parties to have resorted to these tribunals before a principle so important should be admitted to the extent laid down in the resolution more particularly as it has always been held that the treaty of 1783 controuled the laws of the particular States.

2d. Because judgments given upon the statute of limitation are cited without any specification of the circumstances upon which they were given, and inferences are drawn from those judgments, that they were legal impediments, no discussion or examination of the grounds or principles was ever had before the Board upon that subject; nor are the records sufficient to warrant the conclusion that they are legal impediments.

3d. Because a principle is laid down which throws the whole burden of proof upon the United States in every case where legal impediments existed, contrary as is believed, to the clear principles of law and equity. By this decision the creditor is excused from proving that his debtor was solvent at the expiration of the war, or that he has used due diligence for the recovery of his debt. To avoid the payment the United States must prove the contrary in both instances. The injustice that may be done to the United States by the application of this principle, is too obvious to require elucidation. Reason and justice would require, that before the United States could be called upon to pay the British creditor, he ought to prove that he lost his debt by reason of the impediment which prevented his resorting to the courts for its recovery, but under this principle it is presumed not only that the debtor was solvent during the operation of the lawful impediments, but that the creditor took all proper methods within the meaning of the treaty to recover payment from him.

The presumption that the debtor was solvent at the time the treaty was concluded is the more inadmissible, when the circumstances of the country at that period of time is taken into view; it is a fact too notorious to be denied, that by far the greatest part of the personal property of the citizens was wasted and lost during the war, and that for want of markets for the products of the country, the prices were so low for some years after, as to afford no means of paying off debts; the presumption therefore is totally inadmissible on this ground, and the application of the rule if adhered to, will prove beyond contradiction the injustice of the principle.

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By the treaty of amity the United States have only promised the creditors to pay what they have lost by the operation of legal impediments to the recovery of their debts—not all that they should demand on that account, except they could prove that the demand was just.

The decision of a question of this importance, at a time when only one of the commissioners appointed by the United States was present, will certainly not contribute to render it more acceptable.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

In the Case of D. DULANY.

Explanatory observations on behalf of the United States.

IN answer to the third point suggested by the Board, the agent for the United States contended, that by refusing the tender, the creditor would have had it in his power under the laws of the country and the treaty of peace, to have recovered afterwards the full value thereof in sterling money from the debtor. In order to have a proper view of this argument, and before a final decision is made, the agent insists, that proof be produced of the emission of the bills of credit which were tendered and received. None but bills emitted by congress or by the State of Maryland prior to the 18th April 1777, were ever a legal tender in that State. Were the bills of either description which were tendered and received? If they were not, the act of 1777 did not embrace them, and the operation of that law on this case is wholly denied. The payment cannot be said to have been the effect of that law and to have derived any validity therefrom.

It is incumbent on the claimant to produce this proof, and the agent for the United States will produce proof that this is the established interpretation in the State of Maryland of that act. The agent for the United States has thought it

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his duty thus expressly to urge this point least it should be supposed not to have been implied in his former remarks.

JOHN READ, JUN.

Agent general for the United States.

10th August, 1798.

The foregoing explanatory observations were tendered by me to the Board on the 10th August 1798, which they refused to accept, assigning as a reason for the same, that the pleadings in this case were closed.

JOHN READ, JUN.

Agent for the United States.

COMMISSIONERS' OFFICE,

Philadelphia, 5th Dec. 1798.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. SITGREAVES,

Mr. GUILLEMARD.

ORDERED—That the general agent for claimants do without delay lay before the Board the several titles of claimants, stating themselves to be surviving partners, administrators, executors or trustees; and also the powers of attorney, or other authorities, by virtue of which claims have been presented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

OFFICE.

OFFICE OF THE COMMISSIONERS,

Under the Sixth Article of the Treaty of Amity, &c. with Great Britain.

Philadelphia, 18th Dec. 1798.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. SITGREAVES,

Mr. GUILLEMARD.

In the Case of CUNNINGHAM & Co.

THE resolution moved by a member of the Board on the 23d day of October last, on the question of *interest during the war*, which, with other general questions of interpretation, was in the answer to the United States, specially raised and submitted, on full argument, for the determination of the Board in this particular case, as involving "many important principles necessary to be decided," (which answer it appears from the letter annexed to, and printed therewith, was drawn up by the attorney general of the United States, as a leading argument to be referred to in similar cases, and to which reference has accordingly been made) having been again moved, the matter was this day fully discussed, and the resolution passed as follows:—

The Board having considered the argument of both parties on the claim of interest during the war, which is opposed on the following general grounds and principles, as stated in the answer of the United States, viz.

The rules of construction established by the law of nations for the interpretation of "obscure or ambiguous facts:"—

The meaning of the word "*debts*" in the *fourth* article of the treaty of peace as not comprehending interest, because interest is recoverable at law in the technical form of *damages*, for the detention of the debt; "being what is given more than "the principal, that the creditor may not be a loser:"—

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The inference to be drawn from the demand of a deduction of interest during the war, which had been made on the part of the United States in the course of the negotiation previous to the formation of the said article, and from a conversation subsequent to the treaty, viz. in the year 1786, between the British secretary of state for foreign affairs, and the American minister at London; in which the latter suggested "the policy of giving up the interest during the war, and of agreeing to a plan of payment by instalments;" and the former, after "some slight expressions concerning the interest, wished that the courts were opened for recovering the principal," and observed "that the interest might be left for an after consideration:"—

The nature and causes of the war; in the course of which "the products of the land were indispensably necessary for defence against that which, on the side of the Americans, was a war for life, liberty and property: A war pro aris et focus;" attended with circumstances of such desolation (as described in the printed answer) that after the application of what was thus necessary for defence, "there was nothing left to an individual for paying interest on his debt:"—

"The interdiction of commerce to the United States by the British parliament," and stoppage of "intercourse and access between the American debtors and British creditors," by which "the detention of the debt during the war was unavoidable:"—

The departure of creditors, and their factors, from the State, so that no person remained in the country to receive payment of the debt:—

The analogy between the present case, and that quoted from Viner's abridgment, in which it is stated, "that where by a general and national calamity, nothing is made out of lands which are assigned for the payment of interest, it ought not to run on during the time of such calamity:"—

The authority of writers on the law of nations, who support the general position, (which as such has been stated, and not disputed on the part of the United States) viz. "that debts due to private persons before a war, shall be paid after the war; and with interest during the war, if such was the contract, either tacit or express:"—But who also lay it down, that "if nothing else be agreed upon, yet this is to be supposed in every peace, that no action shall be commenced for damages done in war, which is also to be understood of those done to private persons; these being also the effects of war:"—

The equity, as between creditor and debtor, of denying interest during the war, whereby "the creditor and debtor will be put upon a more equal footing; and a loss will not be incurred by the debtor, for the sake of a gain to the creditor:"—

The

The evidence of such equity, arising from "the practice of the courts and juries" in disallowing interest during the war, generally, throughout the United States;" such being stated to have been, and to be "the practice of the courts" (and of juries in all cases that were "under the power of their verdicts") of *New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, and South-Carolina*; in some of which States the claims (it is said) of British debts were "so inconsiderable, and so few, as not to have occasioned public concern, or to have excited any prejudices:"—

The evidence of such equity, in particular, arising from the judgment and opinions delivered by the judges of one of the State courts of Virginia against the allowance of such interest, in the case of *McCall against Turner*, decided in 1796; On which occasion it was stated from the bench (as appears from the report of the case in the appendix to the answer) that on comparing "the conduct of the two nations" during the war, "the comparison was evidently in favour of America;" that of Great Britain amounting to so many defections from the modern "rules of warfare, which did not entitle the creditors even to the principal debts themselves, had they not been stipulated for by the treaty of peace;" a stipulation which "although it was unjust and inconvenient in one respect, yet as the other parts were esteemed beneficial, it was right to accept, for the sake of the general advantages it contained:"—

And the further evidence of such equity arising from the general impression in America during the war, that "in a contest of that kind, if successful," few would be "required at a future day to pay such interest."

RESOLVED—That the description contained in the 4th article of the treaty of peace, of the nature and extent of the right and property thereby secured against the operation of lawful impediments, viz. "the full value in sterling money of all bona fide debts, theretofore contracted," is a description in terms which are clear and explicit; and therefore, the authorities which have been referred to on the construction of "obscure or ambiguous parts," bear no application to the present question:—That the full value of a bona fide debt must mean the full amount of the obligation, with all its incidents, according to the contract:—That interest has been rightly defined on the part of the United States, to be a fixed and settled compensation for the damages sustained by the creditor through the detention or delay of payment of the original debt; "that he may not be a loser;" and in law as well as in equity, such compensation is considered as a growing increase of the debt itself; the form, in certain cases of recovering or awarding such increase of debt in courts of law, by the name of damages, leading to no substantial distinction, inconsistent with the known and long established nature of the right, and that common acceptance of language by which alone the treaty must be construed:—For the argument which has been laid before the Board, from the letter of Mr. Jefferson to Mr. Hammond, previous to the treaty of amity, referred to in the answer to the claim

claim, is an elaborate misapplication of authorities on the technical distinctions and restrictive language of form in courts of law, which the framers of the treaty cannot be presumed to have known, and never meant to apply :—That if from the denomination of damages, as applied to interest in courts of law, the conclusion could be drawn, *that interest was not debt, and therefore not within the meaning of the treaty*, such conclusion would affect the claim of interest in time of peace, as well as during the war, and therefore reach too far for the argument, which admits that interest accruing in time of peace is due according to the contract :—That if any reasonable ground of doubt remained, it would be removed by certain facts, as stated on the part of the United States, and from which a contrary inference has been drawn, viz. the demand, in the course of the negotiation previous to the treaty, of a deduction of interest during the war ; the silence of the article on that head ; the subsequent suggestion by the American minister in the year 1786, of “ *the policy of giving up*” such interest, thereby admitting, as a matter of necessary implication, that the payment of the interest to be thus “ *given up*,” had been previously stipulated and secured ; and the answer made by the British secretary of state to the suggestion of thus “ *giving up*” the said interest on principles of policy, viz. “ *that it might be left for an after consideration* ;” with the fact that it never was on after consideration given up, but on the contrary, by the 6th article of the treaty of amity, which adopts the same general term “ *debts*” as descriptive of the subject matter thereof, “ *the commissioners are empowered and required, in pursuance of the true intent and meaning of the said article, to take into their consideration all claims, whether of principal or interest, or balances of principal and interest*” (without any allusion whatever to a distinction between the case of interest during the war, and interest in time of peace) “ *and to determine the same respectively, according to the merits of the several cases ; due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require* :”—That the Board are thus empowered by the treaty of amity to award interest during the war ; but it is rightly maintained on the part of the United States, that no award can be made under the treaty of amity, which is not founded on a right secured by the treaty of peace ; therefore, an award of interest during the war will be founded on a right secured by the treaty of peace :—From all which it follows, not only that the general term “ *debts*” in the 4th article of the treaty of peace, comprehends the *whole* interest, as well as the *whole* principal ; and that the Board are, by the treaty of amity, required to take the same into their consideration ; but also, that they are bound to decide “ *according to the merits and circumstances of the several cases*,” upon such principles as (with reference to the said merits and circumstances of each particular case) shall appear to them to be just and equitable :—Nor is any distinction to be found in any of the treaties between that part of the claim which is composed of interest and that which is composed of principal, the Board having no greater power of decision over the one than over the other :—That it is not alledged, nor does it appear, that any special bar or ground of objection against interest during the war, arises out of the nature or terms of the contracts, or other particular merits or circumstances of this case ; neither is there any general ground on which the case can be considered as forming an exception

exception to the position arising out of the law of nations and before recited (as stated and referred to on the part of the United States) viz. "that debts due to private persons before a war, shall be paid after the war; and with interest during the war, if such was the contract either tacit or express." For every inference which can be drawn from the particular nature of the war, as distinct from that "of ordinary wars between independent nations," is in favour of the original contract between the parties, and gives strength and application, *a fortiori*, to the sound policy of justice, which preserves unimpaired by national hostility, the full effect and integrity of good faith in private transaction:—But on this head, the sentiments of the Board cannot be better expressed than in the words of a learned judge (*Patterson*) who, in delivering his opinion in the supreme court of the United States on the 7th day of February 1796, in the case *Jones v. Hyllon*, expressed himself as follows:—"I feel no hesitation in declaring, that it has always appeared to me to be incompatible with the principles of justice and policy, that contracts entered into by individuals of different nations should be violated by their respective governments, in consequence of national quarrels and hostilities.—*National differences should not affect private bargains.* The confidence, both of an individual and national nature, on which the contracts were founded, ought to be preserved inviolate. Is not this the language of honesty and honour? Does not the sentiment correspond with the sentiments of justice and the dictates of the moral sense? In short, is it not the result of right reason and natural equity? The relation which the parties stood in to each other at the time of contracting these debts, ought not to pass without notice. The debts were contracted when the creditors and debtors were subjects of the same king and children of the same family. They were made under the sanction of laws common to, and binding on both. *A revolutionary war could not like other wars be foreseen or calculated upon:—The thing was improbable:—No one at the time debts were contracted had any idea of a severance or dismemberment of the empire, by which persons who had been united under one system of civil polity should be torn asunder, and become enemies, for a time, and perhaps aliens for ever. Contracts entered into in such a state of things, ought to be sacredly regarded:—Inviolability seems to be attached to them:—*"The construction of a treaty made in favour of such creditors, and for the restoration and enforcement of pre-existing contracts, ought to be liberal and benign:—For these reasons this clause in the treaty *deserves the utmost latitude of exposition:—*That independent of the irrelevancy of the fact in a question of private right secured to creditors by treaty and the law of nations, the prevention of remittances to Great Britain, and detention of debts during the war," ought not to have been ascribed to the interdiction of commerce to the United States by the British parliament:—"For by virtue of a resolution of congress, which took place on the 10th day of September 1775, and which was stated and recognized by the supreme court of Pennsylvania in deciding the case of *Howe against Allen*, the exportation of all merchandize and commodities whatsoever to Great Britain, Ireland or the West Indies, was prohibited; the said resolution rendering it afterwards (as laid down by the court in that case) "unlawful to make remittances to Great Britain:" And on the 20th day of October

1777, an act of assembly was passed by the State of Virginia, whereby authority was given and an invitation held forth to the debtors of British creditors, to pay their debts into the *Loan Office* of the State; (and such payments were afterwards accordingly made in depreciated paper money, at the nominal value, to a great amount;) the preamble of which act of assembly states a motive for the law in the following terms; "But the safety of the United States demands, and the law and usages of nations will justify, *that we should not strengthen the hands of our enemies*" during the continuance of the present war, by remitting to them the profits or proceeds of such estates, or the *interest or principal* of such debts." Nor can it be received as a better reason for withholding interest on just debts, that "creditors and their factors left Virginia and carried away their books and vouchers, and were inaccessible to the debtors till the return of peace."—For the proclamation by the governor of Virginia, dated the 3d day of June 1776, which, with the charges and accusations it contains, as issued in the heat of war, has been printed at full length in the appendix to the answer "strictly requires and enjoins *all the natives of Great Britain who were partners with, factors, agents, storekeepers, assistant storekeepers, or clerks here, for any merchant or merchants in Great Britain, on the first day of January 1776, to depart this commonwealth with their goods*, within forty days from the date hereof, except such of the said natives as have heretofore uniformly manifested a friendly disposition to the American cause, or are attached to this country by having wives or children here agreeable to a resolution of the general assembly in that case made;" in consequence of which proclamation, many persons of the description therein mentioned did of course depart. That as all coercive measures for recovering payment of British debts were of course suspended during the war, so voluntary payments were thus prevented by laws or public acts of the State, prohibiting remittances to British creditors who were not within the State, and compelling those who were within the State to depart. And it cannot be just, that laws should first be passed, making remittances unlawful, and driving creditors and their agents from the State; and then interest withheld, because remittances were unlawful, and creditors and their agents absent:—That if it could be maintained, that laws which were avowedly made to detain the money in the country, for the double purpose of weakening the enemy by withholding their property during the war, and of securing the use of it for the public service, had the effect to deprive the creditor of his right to demand payment of interest as well as principal on the return of peace, such laws so operating against the recovery of the full value of bona fide debts, would of course come within the description of lawful impediments, entitling the creditor, under the treaty of amity, to compensation for the loss thereby sustained;—But from the facts which have been set forth on the part of the United States, there is at least no room for any general presumption, that if the course of remittance had been free, remittance would have been made; or if British creditors and factors had remained in the State, payments would have been received:—For it is stated in the answer, that "all the products of the land were indispensably necessary for defence, and nothing was left to an individual for paying interest on his debt;" from which it also follows, that nothing can be more remote from all resemblance to the present case

case, than that of *tender and refusal* at law, to which it has been assimilated in the letter from Mr. *Jefferson* before-mentioned; the very essence of tender and refusal consisting in the actual offer of the money, and its being *always ready* to be paid:—That as the means which might otherwise have been applied towards payment of British debts, were thus expended in support of the war with Great Britain, it is of no importance to the conclusion, whether that war “was on the side of America” maintained under the circumstances which have been described, and merely “for defence” against hostile aggression; or for the attainment of great and valuable public objects:—For British creditors were individually on the return of peace as little responsible in the one case, as entitled to or possessed of any participation of benefit from the event in the other:—That all arguments against the just rights of individuals derived from the nature and causes of the war, or reflections on the manner in which it was conducted on the one side or on the other, are besides, as inconsistent with the established principles of the law of nations, as repugnant to the spirit of that discussion which ought to take place in the execution of a treaty of amity:—And so far only will the Board animadvert on the publication of charges against Great Britain respecting the nature and conduct of the war, as stated in the printed answer in this case, and documents thereto annexed, in terms of description which little accord with the business of conciliation and peace:—That the general position in favour of debts due to private persons before a war, as being recoverable on the return of peace, with interest according to the contract, has been stated and admitted on the part of the United States; and in addition thereto the following passage has been quoted from Vattel, viz. “if nothing else be agreed upon, yet this is to be supposed, that no action shall be commenced for damages done in war, which also is to be understood of those done to private persons, these being also the effects of war:”—But if this latter position had reference as has been argued, to the case of interest, it would be directly inconsistent with the former; besides being precluded in its application to the present case by the condition it contains; for here there is an *express agreement* by treaty to the contrary; and as damage done in war to the property or effects of individuals is not the subject of an action on the return of peace, so it cannot in justice be the ground of objection or defence against an action for recovery on an antecedent right:—That the case which has been put and relied on, as stated in the said letter from Mr. *Jefferson*, of interest separately secured by an *assignment of lands*, of “a general and national calamity” by which “nothing is made out of the lands” so assigned, and of the stoppage of the currency of such interest during such calamity, bears no analogy whatever to the present case:—For, without enquiring how far the nature of “the general and national calamity” contemplated in the case referred to, supports the comparison; or resting upon the fact, that in this case payment was not withheld from a failure of means, but from the application of those means on the part of the debtor to other purposes, it is sufficient that here there is no such assignment of lands, or specific appropriation and acceptance of a particular security or fund of payment; but a simple, absolute, and unqualified obligation by the debtor, that the debt, principal and interest, without

distinction, shall be paid, which nothing short of performance or the creditors voluntary acquittance can either abridge or release :—That the true nature of interest cannot be better described than in the words of Mr. *Justice Shippen* in the case of *Petit against Wallis*, as follows, viz. ‘ In short, the £.5 000 paid with interest at “ this day is not, in fact or law more than the £.5,000 paid without interest at “ the day it becomes due :”—That an award of interest during the war, would not (as has been urged) create ‘ a loss to the debtor for the sake of a gain to the “ creditor ;” for according to the compendious description of the nature of interest which has just been referred to, and the definition already stated, as maintained with much argument, and on many authorities, on the part of the United States, interest is not gain but compensation to prevent loss ; so that the denial of interest would be gain to the debtor, and loss to the creditor ; with an increase in proportion to the additional value of money during the war :—That therefore if the Board were to depart from their duty, in the impracticable attempt suggested in the answer, of placing debtor and creditor “ upon an equal footing,” by estimating conjectural losses and balancing inequalities in their respective situations advantages, or sufferings, during the war, the settled rate of interest might be found in many instances to fall very far short of the losses, immediate or remote, sustained by the creditor through the detention of his debt, at a time when payment was most wanted ; while the gain of the debtor, in the application or use of the money or property so withheld might far exceed the amount of interest for which he was liable ;—That as many individual inhabitants of the United States were doubtless, reduced to a state of insolvency by the war, so it is matter of equal notoriety that many British merchants, and other subjects of his Britannic majesty were driven to bankruptcy and ruin through the loss of trade, non-payment of debt, and other circumstances arising from the same common calamity ; but it does not appear, nor has it been alledged, that any such claim of exemption from interest during the war has ever on that account been attempted or set up, or could be maintained in any of his said majesty’s dominions by any such British debtor, however unfortunate, or however clearly his losses might be deduced from the same cause which has been held a sufficient ground for such exemption in favour of American debtors ; so that the principle applied by the learned judge, and on the occasion first above-mentioned, to the case of British creditors whose debts had been paid into the State treasury, is equally applicable to the present question, and was stated by the said learned judge in the following terms : “ The construction on the part of the defendants *excludes* “ *mutuality*. The debts due from British subjects to American citizens were not “ confiscated or sequestered, or drawn into the public coffers. They were left un- “ touched. Now if all the British debtors be compelled to pay their American “ creditors, and a part only of the American debtors be compelled to pay their “ British creditors, there will not be that mutuality in the thing which its nature “ and justice requires. The rule in such case should work both ways ; whereas “ the other construction creates mutuality and proceeds upon indiscriminating prin- “ ciples. The former construction does violence to the letter and spirit of the “ instrument ; the latter flows easily and naturally out of it :”—And so it may be said,

said, that if debtors in Great Britain to American creditors may be compelled to pay their full debts, interest as well as principal, and debtors in America to British creditors can only be compelled to pay a part of their debts, viz. principal and part of the interest, the construction "excludes mutuality" in the execution of the article, and "does violence to the letter and spirit of the instrument:"—That the alledged equity of denying interest during the war, derives no support from the expectation which it is said prevailed during the war on the part of debtors in America, that "if the event proved successful" they would be thereby so far relieved from the payment of their debts; for the same expectation may have prevailed to the full extent of the *whole debt* due to subjects of Great Britain, principal as well as interest:—Nor can any such equity be supported on the verdicts and decisions of courts against such interest; whether they have been given in those particular States in which it is alledged "the claims of British debts were so inconsiderable" and so few as not to have occasioned public concern, or to have excited any "prejudices;" or in States where the claims of British debts were so considerable and so many as to occasion "public concern" and "excite prejudices:"—For such verdicts and decisions against any part of the stipulated or settled interest of just debts, are themselves the subject of complaint before this Board, as lawful impediments to the full recovery of such debts; on the existence and justice of which the Board are bound and authorized exclusively to decide:—That therefore no sufficient cause has been shewn, why in awarding full and adequate compensation for such debts as may be proved, within the intent and meaning of the treaties, full interest should not be awarded for the detention and delay of payment during the war, as well as in time of peace; but on the contrary, for the above reasons, and others which might be stated, it is just that such interest should be awarded, according to the nature and import, express or implied, of the several contracts on which the claim is founded.

Mr. SITGREAVES dissented from the above resolution.

Mr. FITZSIMONS also dissented.

Philadelphia, 19th Dec. 1798.

In the Case of CUNNINGHAM and Co.

MR. SITGREAVES desired to enter his dissent from the resolution in this case passed at the last meeting, for reasons stated in a minute which he presented and read before the Board.

Mr. FITZSIMONS stated that he would prepare a minute containing his reasons against next meeting.

Philadelphia,

Philadelphia, 21st Dec. 1798.

In the Case of CUNNINGHAM and Co.

The minute of dissent of Mr. Sitgreaves, read at the last meeting, is in the following terms, viz.

I HAVE d tised to enter my dissent to this resolution, not because I differ from *all* the principles and inferences contained in it, but because there are *many* in which I cannot concur.

I dissent also, because it does not specifically apply to the case in which it purports to be resolved:—Because it attempts to establish a general conclusion on a subject, on which no *general* or *universal* proposition can be accurate or correct:—And because it precedes the proof of the facts, without the knowledge of which it cannot be determined that any *particular* or *special* rule, in this case, would be just or equitable.

I will proceed to explain, in detail, but with as little prolixity as possible, these different grounds of dissent.

1st. I agree explicitly that the Board, by the 6th article of the treaty of amity, are authorized to consider and determine all claims “whether of principal or interest;” and that therefore there is no sufficient reason, derived from any technical interpretation of the word “debts” in the treaty of peace to *exclude* the consideration of demands of interest *during the war*, or for any other period:—Or to prevent the award of interest, in any case, where it may be deemed just and equitable that it should be paid.

But on the other hand, it is equally clear to my judgment, that the same word “debts,” does not necessarily *include* interest, either during the war, or for any other period:—That this observation is also true of the words “full value” in the treaty of peace, which by sound construction ought to be taken, not as a distinct member of the sentence, but in connection with the words immediately following “in sterling money,” and are indicative, not of the *quantum of the demand*, but of the *mode or quality of the payment*:—That as by the treaty of amity, all claims, “whether of principal or interest,” are to be “determined” according to the merits of the *several cases*, “due regard being had to *all the circumstances* thereof, and as equity and justice shall appear to require,” it obviously follows that the Board are not of necessity bound by any interpretation of the words of the *former treaty*, to award interest *during the war*, in *all cases*, but may refuse to award interest in whole or in part, if the *merits and circumstances* of a case shall make it just and equitable that it shall be denied or reduced.

And therefore that any *general resolution* on the subject of interest, either allowing or denying it during the war, or for any other time, is improper, and not conformable

formable to the submission in the treaty ; because the allowance or denial is, by the terms of the treaty, made to depend on the *merits* and *circumstances* of each case ;—Not of each *claim* but of each *case* or item of debt contained in, and constituting a part of each claim.

2d. That “ equity and justice ” will require us to deny interest in a variety of cases, in some during the war, in others for a longer term, and in others altogether, will be evident on a consideration of the nature, the meaning, and character of interest :—From this consideration it may also result that, in some cases, the *whole* interest ought to be awarded.

The word “ INTEREST ” has not always the same signification :—Or rather, it has *two* different and distinct significations. It sometimes means “ the hire of money,” or “ wages for the use of money : ”—This was the ancient acceptation of the term, and is the acceptation in which it is still used by writers on the law of nature and of nations, and on political æconomies :—This is its proper import when it is stipulated to be paid on a loan, in which case it may be described as of *strict* obligation, because it is the essential consideration of the contract, and is emphatically a *part of the debt* :—It is a distinguishing feature of this species of interest, that it may be owing *before the principal is due*, as in contracts for money payable at a distant day but bearing a present annual interest.

In the *other* signification of the term, *interest* is synonymous with *damages* :—It is damages for the breach of contract, or more properly “ it is the *common measure* “ of damages where the contract is for money ” 2 Tr. Eq. lib. 5. ch. 1. s. 1. This is the acceptation which most frequently occurs in municipal jurisprudence, and which chiefly applies to that vast variety of the common transactions between individuals, in which the failure of punctuality is a ground of complaint in the courts of justice :—In this sense it partakes essentially of the nature of *damages* in general, from which it is only distinguishable in this, that it is measured by an uniform rule, “ fixed by the law to a certain portion of the sum that is due, for “ the space of a year, and proportionably for a longer or shorter time.” 1 Dom. lib. 3. tit. 5. But conformably to the general character of *damages*, and contrary to the attribute of the sort of interest first described, it can *never accrue until* there has been a *default of the party* in the performance of his contract—and, like damages, it is dependent on the circumstances of that default ; for, when it shall commence, when it shall cease, when it may be *suspended*, when it shall be *revived*, or whether it shall be paid *at all*, are all questions to be governed by the circumstances, and decided differently as those circumstances shall vary :—This sort of interest has been obviously contemplated by the treaty, when it has adopted the expressions before quoted, and which it has well described by directing that such claims shall be determined “ according to the merits of the several cases, due regard being “ had to all the circumstances thereof.”

In cases to which the *first* sense of the word applies, that is, in cases where interest is of strict obligation and forms a *part of the debt*, I agree that the *whole* interest must be paid as well during the war as for any other period. I think the law of nations, and the stipulation of the treaties equally produce this effect, and that

that though the state of war suspended the *remedy*, it did not suspend the *right*.—I incline to think that the same acceptation of the term will apply to those cases of *specialty*, for whatever reason given, which *expressly* bear interest on the face of the *instrument*, although on this subject I desire that I may not be considered as concluded by this intimation, as the enquiry does not, at least *yet*, appear to be essentially connected with this argument, *in this case*.—The question of interest, according to the *usage of a trade* is still more doubtful, and I decline at present giving any opinion upon it.

But as to all *other* kinds of debt which may be the subjects of claim, it does not seem to me to admit of a doubt, that interest, during the war, *cannot* rightfully be awarded. It is already shewn that interest, in cases of every other description than those just enumerated, being in the nature of *damages*, can *only* accrue on the *default* of the party.—It cannot be pretended that there is a *default*, where, from circumstances *beyond the controul of the party*, payment is rendered impracticable. Nor can it be denied that a state of *war* between the nations of the creditor and debtor is *such a circumstance*. This is a position altogether independent of any supposed distinction grounded on the nature of the war between the United States and Great Britain, as different from ordinary wars, which has been contended for in the answer, and so elaborately combated in the resolution; and it is equally uninfluenced by any considerations deduced from the merits of the contest, or from the legislative acts passed on the one side or the other. I agree, that in executing a treaty, designed to terminate differences between the nations, “in such a manner as “without reference to the merits of their respective complaints and pretensions, “may be best calculated to produce mutual satisfaction and good understanding,” these considerations, on either side, are irrelevant and improper.—But it is a *necessary incident of all wars*, to interdict and cut off all communication between the individuals of the hostile nations; and this is completely effected without any prohibitory laws on either side. It is of no import, therefore, what those laws were, or on which side aggression commenced—it is sufficient to the purpose that the nations were *at open war*, and that their people respectively could not lawfully have intercourse with each other. From this state of things it is inevitably resulted, that the debtor was prevented by the intervention of a circumstance, not attributable to him, as *fault* or *laches*, from compliance with his contract; and that if thereby the creditor has sustained a loss it is *damnum absque injuria*, and he is not entitled to reparation in damages from the debtor.

If this obvious inference from undeniable principles could need any confirmation, it is to be expressly found in the letter from Mr. Hammond to the Secretary of State, complaining of infractions of the treaty of peace by the United States:—On this very subject of interest during the war, he thus writes, “In one State “(Massachusetts Bay) where great property was at stake, *justice has been liberally “dispensed*, and, notwithstanding a particular regulation of the State warranted “the deduction of that portion of the interest on the British debts which accrued “during

"during the war, the courts, in conformity to the plain terms of the treaty, have admitted and directed the quantum of the demand to be regulated by the original contract, and where the contract bore interest, or the custom of the trade justified the charge the full interest has been allowed to British creditors, notwithstanding the intervention of war :"—This is conceived to be a formal and express admission, on the part of the British government, that the payment of interest during the war, in cases "where the contract bore interest, or the custom of the trade justified the charge, was all that was required by 'the plain terms of the treaty of peace'"—and that in cases of every other description, there cannot be a reasonable pretence to claim or demand it.

In truth, the books of authority on natural and civil law, as well as on the laws of England, leave no room for doubt on the subject :—A few, and but a few, are here cited.

"All the sorts of reparation of damage are reduced to two kinds ; one of which is barely called interest—and the other costs and damages."

1 Do. lib. 3. tit. 5.

2 Tr. Eq. lib. 5. ch. 1. s. 1.

"Interest is the reparation of damages which is due from debtors who owe sums of money, and who fail in the payment thereof."

1 Do. lib. 3. tit. 5. § 1.

"Debtors incur the penalty of interest by their delay to pay what they owe, according as the said delay may be imputed to them, and may have that effect, which depends on the nature of the credits and the circumstances. *Ibid.*"

"In case of accidents which happen without any fault of the party, he will not be liable to reparation of damages, by the rule that nobody is to answer for accidents, except there be some fault on their part."

1 Do. ubi. sup.

2 Tr. Eq. Lib. 5 ch. 1. § 1.

"By damage we understand any loss or diminution of what is a man's own, occasioned by the fault of another :—And by a fault we understand every unlawful act or omission."

1 Ruth. ch. 17. § 1.

If a misfortune has happened without the fault of either party. "there is no reason to throw off the loss from one innocent man to another innocent man :"—In such case *potior est conditio defendentis*.

3 Burr. 1357.

"Damages

"Damages are in the power of the court, and therefore they usually order them as they see convenient." 2 Tr. Eq. Lib. 5. ch. 1. § 5. The cases cited to illustrate this position are all of interest.

"The instances in which the court has exercised its discretion, in allowing a greater or less rate of interest, are too many and various, to allow of enumeration."

Ibid in notis.

"It would be unreasonable that those things which are inevitable, which no industry can avoid, no policy prevent, should be construed to the prejudice of any person in whom there is no laches."

Powell on Cont. 446.

There might be added a great many more authorities of the most unequivocal import; but these are deemed sufficient to prove what has been advanced.

3d. The claim in which this resolution is offered, is a most unfortunate one for the establishment of an affirmative rule on the allowance of interest during the war, or even for any period whatever.

From all that yet appears, and so far as a judgment may be formed from the claim and schedules which accompany it, there is not a single item which can be said to come within that class of contracts, that carry interest of the first description I have mentioned; that is, where the interest is a part of the debt, either by the terms of the contracts or even by the usage of trade.

The items are principally of accounts which have been incurred in the course of retail dealings in the State of Virginia; and which, so far from being entitled to interest during the war, are not, either by the law of England or America, entitled to interest at all as a matter of course. — And even if it should be denied, that the intervention of war is an excuse for the debtor, it cannot surely be pretended that it gives to the creditor an accumulative right which he would not otherwise have possessed.

It is assumed in the answer on the part of the United States, that debts of this description have at no time carried interest in Virginia; and the contrary has not been asserted either in the claim or reply.

And the acknowledged doctrine of the law of England must, on every principle of mutuality, preclude all demand of interest in such cases.

It is a general rule of the English law, as well as of the civil law, that interest shall not be allowed on profits; and the reason assigned is, that as interest, strictly speaking,

speaking, is itself the *profit* to which a man is entitled for the use of his money, so the right is satisfied if that profit is obtained in another way, in which case the profit is in lieu of interest—thus, interest, except in very special cases, shall not be allowed on *interest*:—Nor on *rents* which are the *profits* of land that represents money:—Nor on arrearages of *annuities*, which are compounded of principal and the interest or *profit*—nor on *goods sold and delivered*, the profit on which is equivalent to the interest on the capital employed in the trade.

But whatever may be the reason, it is most clearly settled by numerous decisions, both at law and in equity, that *simple contracts*, and debts *on open accounts*, and for *goods sold and delivered*, do not, of course, carry interest:—And this has, so late as in 1793, been solemnly determined by the present lord chancellor, even where the amount has been ascertained by the master's report, in the case of *Creuze v. Lowth*, 4 Br. Ch. Rep. 317. Reported also in *2 Vesey, junior*, 157, under the title of *Creuze v. Hunter*—which case was decreed after a careful revision of the rules and practice of the court in former cases.

The opinion of the preceding lord chancellor, in the case of *Boddam v. Riley*, 2 Br. Ch. Rep. 3, and which I transcribe here because it is conclusive on most of these items, shews also, that they derive no additional title to interest from the mere circumstance of their being due on *balances*:—He says,

“ The cases cited apply only where there are accounts regularly stated *between the parties*, in which case there is an implied contract on the part of the debtor to pay; and all contracts to pay, undoubtedly give a right to interest from the time when the principal ought to be paid:—But this is not so here:—It is true, the sum claimed does, in fact, appear to be due, on a balance, at the close of the account; but there was no settlement, or acknowledgment by *the debtor*, which raises a contract to pay, and which is *the only ground upon* which interest is given, 1 Wms. 653, for according to the argument of the exceptant, that whatever appears to be due on the balance of an account shall carry interest, the rule must go to *every debt for goods sold and delivered*, which *certainly is not the law of this country*.”

There are unquestionably, many qualifications and exceptions to this rule relative to interest on simple contract debts, as well as to the rules relative to every other description of debts:—But it is not necessary to advert to these exceptions in an argument of this general nature, especially as they are not stated to apply to any part of this case:—These exceptions however prove how impracticable it is to arrive at any general result on a subject, which is liable to such an infinite variety of modifications, and how improper it is, that any resolution should precede the proof of the merits and circumstances of the particular case in which interest is demanded.

It would be easy to adduce numberless other proofs and illustrations in support of the principles herein advanced:—And also to lay down many other positions affecting the claim of interest, in whole or in part, in various cases submitted to the decision of the Board:—I have purposely avoided this sort of anticipation, and have endeavored to be as brief as possible; because, as I disapprove altogether of these premature and argumentative resolutions, it is proper that I should conform my practice to this sentiment, as far as the course which has been pursued will permit for the explanation and vindication of my own opinions.

(Signed)

S. SITGREAVES.

September 19, 1798.

Mr. FITZSIMONS read a minute of his dissent, which is as follows:—

I desire to enter my dissent to the resolution passed by the Board on the 18th inst. in this case, on the subject of interest during the war—for the following reasons:—

Because, the debts which are the subject of the resolution, were payable in the then colonies now United States: And it is admitted by the creditors, that for a considerable period there were no persons in the United States authorized to receive these debts:—

It therefore appears to me to be highly unreasonable, that a debtor should be made subject to the payment of interest on a debt, which the absence of the creditor rendered it impossible for him to discharge:—

Because, at the close of the war, when all its effects were strongly impressed upon the minds of the creditors, an abatement of interest for that period was generally allowed, and settlements to a very great amount have since been made with that allowance.

Judgments of courts, verdicts of juries, and awards of referees, have almost universally been made upon the same principle, which proves irresistably the general opinions of its equity by people perfectly well informed of all the circumstances of the case; nor ought their opinions to be shaken by a decision given at a time when many of the circumstances which influenced them must have lost their effect.

(Signed)

THOMAS FITZSIMONS.

The said minutes of dissent having been read, the Board RESOLVED—That in deciding against an objection to the payment of interest during the war, maintained

tained generally and without regard to the nature and import of the contract, express or implied. They do not preclude, but necessarily save all objections to the payment of interest which may arise out of the contract, or other special circumstances of the case.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 18th Dec. 1798.

PRESENT, AS BEFORE.

RESOLVED—That the Board will receive such evidence only to prove the debts which are the subjects of claim before them, as would have been competent and admissible to prove the same immediately previous to the operation of lawful impediments in the courts of the States where the debtors at that time respectively resided, unless upon special cause first shewn, and an order of the Board for the admission of evidence of any other description.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 18th Dec. 1798.

PRESENT, AS BEFORE.

ORDERED—That the general agent for claimants and agent for the United States respectively furnish the commissioners with copies of all papers laid before the Board, whether averments for evidence, or other representations, or statements containing incidental objections, or questions for their consideration.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 8th Jan. 1799.

PRESENT, AS BEFORE.

ORDERED—That the general agent for claimants do immediately lay before the Board, such powers of attorney or other authorities by virtue of which claims have been presented or prosecuted as are in his possession: And renewed the general order of the fifth December last with this intimation, that the said general order, if not obeyed within a reasonable time will be enforced by a resolution, that all claims not supported by the production of titles and authorities to prosecute the same, within a certain term to be therein prescribed, shall on that account be dismissed.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

23d October, 1798.

A RESOLUTION on the subject of the protest in the case of *Dulany*, and dissent in the case of *Cunningham & co.* proposed for the decision of the Board on a future day, was read.

COMMISSIONERS' OFFICE,

11th January, 1799.

PRESENT, AS BEFORE.

In the Case of DANIEL DULANY.

THE resolution on the subject of the protest and dissent therein mentioned, laid before the Board on the 23d day of October last for their decision on a future day, was now (pursuant to intimation given on Tuesday last) again moved for
that

that purpose; the member who made the motion observing that the proceedings in question, which stand recorded in the minutes of the Board, and were by special order communicated to the agents, had become matter of very general notoriety, and could not fail, from the imputations and suggestions they contained, to produce impressions unfavorable to that confidence which ought, in justice and expediency, to be reposed in the principles of men, who are charged with the impartial duties of arbitrators by treaty between two friendly nations:—He therefore hoped that the animadversion necessarily, and with reluctance, conveyed by the resolution, would never be ascribed to any personal feeling on the subject. It cannot be forgotten that much remonstrance and expostulation were employed in vain to prevent all occasion for any such resolution; and sufficient time has elapsed (from the occurrence of circumstances) to prove the deliberate conviction on which the motion proceeds. The mass of business now at length brought before the Board will demand a steady course of uninterrupted proceeding; and amidst the variety of cases which must occur, either in the establishment and application of general principle, or the investigation of fact, it is impossible to expect that unanimity will in every instance obtain; even with the best disposition in the members of the Board to refrain from all frivolous dissention or immaterial controversy. The object of the resolution ought therefore to be well understood; and as it may correct misapprehensions, of no convenient tendency, so it cannot possibly be productive of bad consequence—for the public profession of principles of conduct which ought to give satisfaction to all parties, will not at least weaken the influence of such principles on those who profess them.

The resolution proposed was as follows:

The Board, considering how much it imports the right and decorous exercise of the powers and duties with which they are charged, that those powers and duties should not be suffered to remain the subject of question or dispute, in matters essential to the existence of all certainty and order in the course of their proceedings:—And in particular considering that, by the terms and tenor of the protest which was entered against the resolution of the Board in the case of *Dulany*, dated the 8th day of August last, and the minute of dissent of the same date, in the case of *Cunningham and Company*, certain questions of order have been raised, which it therefore behoves them finally to settle and decide, **RESOLVED** as follows, viz.

That by the said protest it is either expressly or in effect asserted and maintained, that any one or more of the commissioners differing in opinion from the majority present, have a right to be absent, or to withdraw from, and thereby to prevent the meeting, or cause the dissolution of the Board, for the purpose of preventing the passing of any proposed order, resolution, or award which may then be under discussion; and that the previous declaration of a commissioner that he would not “give countenance” to the passing of a proposed resolution, as being

“manifestly

"manifestly unjust," but should withdraw to prevent it, entitles him to be considered as having actually so withdrawn, and as being absent from the Board "to that purpose," so that "it becomes his duty to protest against the validity of such resolution as not having passed the Board," notwithstanding his having remained, and been personally present in his place, when such resolution was passed, by the assent and with the concurrence of all the other commissioners present. That further by the said protest it is formally and officially declared, and entered on the minutes of the Board, as the opinion of *one* commissioner, that a resolution which after long and mature deliberation had been agreed to, and on special grounds and reasons therein set forth, determined to be just by three commissioners, being all the other commissioners (including the fifth commissioner) then present, was not only unjust, but "manifestly unjust;"—And the injustice being thus declared to be manifest, or palpable on the face of the resolution, no reason whatever is assigned in support of the charge.

That the concluding paragraph of the dissent, in the case of *Cunningham and company*, which is in these words, viz: "That the decision of a question of this importance at a time *when only one of the commissioners appointed by the United States was present*, will certainly not contribute to render it more acceptable," contains, in substance, the two following suggestions: *First*, that no matter of importance ought to be decided in the absence of one of the commissioners named on either side, unless the decision proposed by a majority of the Board be favorable to the side on the part of which such absent commissioner was named:—And *secondly*, that the question, how far the proceedings of the Board, or the result of any of their deliberation may or may not be "acceptable" to those concerned, is a fit subject for their official consideration and regard:—

That the several matters above stated, as contained, or suggested by the said protest and dissent, are inconsistent in themselves, without foundation in the 6th article of the treaty, and repugnant to those principles of impartiality and independence, on which alone the Board will ever suffer themselves to proceed, or the said article can be executed:—

1st. *Because* the right assumed in the protest is a right of refusing to discharge the duties which every commissioner by the said article of the treaty is specially "required," and by the oath thereby prescribed, has solemnly promised to discharge. By the said article the commissioners "are empowered and required, in pursuance of the true intent and meaning of the article, to take into their consideration all claims, and to determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof and as equity and justice shall appear to them to require," and by the oath thereby prescribed every commissioner has sworn, "that he will honestly, diligently, impartially, and carefully examine, and to the best of his judgment, according to justice and equity, decide all such complaints, as under the said article shall be preferred to the said commissioners:"

"missioners:"—But as by the express provision of the article there can be no official deliberation, examination or decision of claims without the constitution of a Board, by the attendance of "one of the commissioners named on each side, and "the fifth commissioner," the refusal of a commissioner to attend, or his withdrawing for the purpose of preventing the formation of, or dissolving a Board, would evidently be in effect a refusal "diligently to examine, and to the best of his judgment to decide" such complaints, pursuant to the treaty, and to the oath which such commissioner had taken.

2d. *Because* the treaty having provided that the act of the majority shall be the act of the Board, such act cannot be impaired in its operation or effect by the dissent of the minority. But according to the right assumed in the protest, there could be no certainty without unanimity: Every deliberation might be defeated, and all decision prevented, by the secession of the minority, who would therefore so far possess the absolute controul of the Board.

3d. *Because* if ever it could become "the duty" of a commissioner in any case to withdraw, so as to prevent a decision, on account of his holding a different opinion from the majority present, it would be his duty so to do in every such case, without exception:—And thus the necessary exercise of a duty, under the said article of the treaty, would in every such case necessarily prevent its execution.

4th. *Because* the provision that a Board cannot be formed without the presence of "one of the commissioners named on each side and the fifth commissioner," affords no rational ground for the inference, that therefore every such commissioner has a right, by non-attendance, to prevent a Board from being formed, or when formed, by secession to dissolve it. Death, sickness, or other accidents may prevent the formation of a Board; but it were preposterous to conceive that the article, in providing for its execution, intended to authorize a wilful absence, for the very purpose of defeating what it professed to secure.

5th. *Because* the distinction which has been made between corporeal and official presence, or presence to one purpose and not to another, has, at least, nothing to support it in any part of the treaty, and cannot be considered as rational in itself. It would at best be a refinement of little utility; for the contrivance of a *fictitious absence* is not necessary for the purpose of reconciling the actual presence of a member with his previous declaration of an intention to withdraw. It were more natural, and not less consistent, to say, that after declaring an intention, he refrained, on better reflection, from carrying such intention into execution. The *fact* in the present instance, that the member protesting was present in his place, with all his faculties about him, when the resolution against which he protests was passed, can never be shaken by words; and the condition of the article is fully satisfied, in substance as well as in terms, if the members thereby required, in sufficient capacity to deliberate, discuss and decide, are actually present.

6th.

6th. *Because* the official publication on record, of the opinion of one commissioner, that a resolution deliberately considered and agreed to by three, being all the other members of the Board for reasons therein specially set forth, was "so manifestly unjust" as not to be entitled to "the countenance" of his support, can only be palliated in part, by the presumption, that the true meaning and injurious operation of the terms made use of have not been understood:—For without advertg to the importance of one withholding his "countenance" from the joint and deliberate act of *three*, injustice to be "*manifest*" as charged, or palpable on the face of the act, must of necessity be intentional; and the reasons set forth in support of it, mere artifice and pretext;—contrary to oath, honour, and reputation.

And in regard to the suggestions above stated, as contained in the dissent in the case of *Cunningham and company*:

7th. *Because* the first of those suggestions reprehends what the 6th article of the treaty expressly directs. It is thereby declared, that "three of the commissioners shall constitute a Board; and shall have power to do any act appertaining to the said commission, provided, that *one* of the commissioners named on each side, and the fifth commissioner shall be present, and all decisions shall be made by the majority of the voices of the commissioners then present." But the suggestion declares that three members, as therein described, *ought not* to form a Board for the decision of any important matter, the presence of one of the said commissioners on each side not being in propriety sufficient for that purpose; from which it would necessarily follow, that the decision of a question of importance, however elaborately it may have been argued or maturely considered, and however clearly a majority of all the five commissioners may have formed and declared their concurrence in opinion, ought, notwithstanding, to be kept back and withheld from the parties, and all concerned in cases of the same nature and import, because one commissioner dissents, and the other commissioner named on the same side whose presence the treaty does not require is absent; the attending and dissenting commissioner having moreover ample means of information, and constant opportunity of bringing forward in support of his dissent, every aid which such information can afford or the best abilities suggest: The Board cannot but withhold their sanction from such propositions:—But they have sufficiently proved, by the whole course of their conduct during the sickness of one of the commissioners, named on the part of the United States, for many months, and as long as the state of the business before them, and other circumstances, could justify a delay of important determinations, that they are little disposed to be precipitate in any of their proceedings.

And lastly. *Because* the second suggestion above stated as contained in the said dissent, viz. That the Board are officially to consider how far their proceedings may be "*acceptable*" to those concerned, would add a duty to their task which the treaty has not imposed. They are not to court favour, but to do justice; not to consult

consult the wishes, but to decide upon the rights of parties. The object of their functions neither requires, nor can admit of management or address. They have engaged, as they shall answer to their own consciences, that their principles shall be pure, their diligence exact, and their deliberations suitable to the subject. Within the scope of their office they can have no other care; and are entitled, without solicitude, to expect, that whatsoever they determine to be just, will be "acceptable."

The said resolution having been read, Mr. SITGREAVES moved the following resolution, and was seconded by Mr. FITZSIMONS:

The resolution heretofore presented for consideration on the subject of the dissent in *Cunningham's* case, and the protest in *Dulany's* case, being moved this day for decision, the commissioners named on the part of the United States moved, that it be resolved, that it is inexpedient that any question be taken upon the proposed resolution.

The question having been put upon the said motion, the same was negatived by the Board.

It was then proposed to put the question on the principal resolution, when Mr. FITZSIMONS read the following paper:

The commissioners named on the part of the United States, sincerely desirous of executing with justice and impartiality and in a manner conformable to the most liberal principles of equity and good faith, the important duties assigned to them by the treaty of amity:—And solicitous that every thing should be avoided in the proceedings of the Board, incompatible with that harmony and moderation, and that mutual deference and respect which ought to prevail among persons engaged in the adjustment of national differences, have observed with great concern and regret, the resolutions proposed by Mr. MACDONALD on the 23d of October, for subsequent discussion and decision by the Board, in relation to the protest in the case of *Dulany*, and the dissent in the case of *Cunningham and co.* and they had hoped that on more mature reflection, a sense of propriety and decorum, and a desire to conduct the business of the commission to an issue honorable and satisfactory to all parties, would eventually have prevented a perseverance in propositions not necessarily or essentially connected with the duties prescribed by the treaty.

Being unfortunately disappointed in this hope, and finding that it is intended to insist upon a discussion and decision of the propositions referred to, they owe it to the individual member whose acts are the subjects of those resolutions, to their own character, and to the honor of their nation, to prevent, by the only method in their power, a proceeding not justified by the authorities vested in the Board, injurious in its form, exceptionable in its substance, and in its consequences destructive of the means, by which alone the objects of the commission can be honorably or impartially effected.

They deem it to be indisputably true, that neither the terms nor the spirit of the sixth article of the treaty of amity, give any authority to the Board to sit in judgment on the acts of its members, or to limit or prescribe the several exercise of their individual duties; and they cannot by any indirect or implied acquiescence consent, that the Board shall denounce with its censures, that exercise of individual discretion and opinion which is beyond its controul; or by assuming this power of censure, in any degree affect or abridge the perfect freedom and independence of individual sentiment and conduct. Much less can they consent to propositions, which besides the defect of authority already suggested, are highly offensive in their terms, and which directly and unequivocally reflect on the integrity of one of the commissioners on the part of the United States. They cannot consent even to the discussion of such propositions; for merely to discuss them would be, in a great degree, to suffer the indignity, and to partake of the indecorum.

The commissioners named on the part of the United States, therefore, with much regret for the occasion, but with the most perfect conviction of their duty, are compelled to withdraw from the Board for the reasons stated: But they expressly declare, that they are sincerely disposed to proceed with the utmost diligence and fidelity in the proper business of the commission, and are ready and willing to constitute the Board at all times, for the purpose of examining and deciding such claims as have been or shall be duly preferred, and are submitted to its decision under the treaty of amity, commerce and navigation.

THOMAS FITZSIMONS.

S. SITGREAVES.

Mr. FITZSIMONS and Mr. SITGREAVES then withdrew.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

Commissioners'

COMMISSIONERS' OFFICE,

19th February, 1799.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. SITGREAVES,

Mr. GUILLEMARD.

In the Case of the Right Rev. CHARLES INGLIS.

The following resolution having been the subject of full discussion in the Board during several sittings, Mr. MACDONALD with the concurrence of Mr. RICH and Mr. GUILLEMARD, moved that the same should be passed.

RESOLVED—That the personal incapacity to sue and recover in the courts, under the 4th article of the treaty of peace, arising from the description and character ascribed to the claimant, as maintained (with reference to authority) on the part of the United States, and from the act of *attainder* and confiscation before stated, by which *attainder* the claimant "lost all civil and political relation to the "State;" the total extinction of his right to the debts in question, notwithstanding the treaty of peace, by virtue of the said act of *confiscation*, and other acts and proceedings pursuant thereto, as declared by the concurring decisions of courts of competent jurisdiction before the treaty of amity; and particularly as declared, (respecting the conclusive effects of *confiscation* against the right of the original creditor) by the unanimous opinion of the judges of the *supreme court* of the United States in Feb. 1794, delivered by chief justice Jay, in the case of *Georgia against Brailsford* and others, before recited, agreeably to the statement of the law which has been laid before the Board on the part of the United States, in the manner before mentioned; and the general course of judicial practice in *deducting interest*, as before referred to, were *lawful impediments*, operating against the recovery of the debts due to the claimant, within the meaning of the treaty of amity, at the date of the said treaty; "so that by the ordinary course of judicial proceedings, the claimant could not then obtain, and actually have and receive, full and adequate compensation for the loss and damage which he had thereby sustained:"—That the loss stated to have arisen from the operation of the said lawful impediments, was not occasioned by "the ma-

" nifest

" manifest delay, negligence, or wilful omission" of the claimant ; for no duty of diligence could demand the prosecution of expensive proceedings at law, on the surmise of a chance, in opposition to legislative acts, the uniform decisions of competent courts, and the established course of judicial practice ; nor can the claimant be held to have known, that what the courts had determined to be law was not law ; that bound and authorized as they were to apply the constitution, their decisions were against the constitution, and therefore void ; and that what they had adjudged *not* to be within the treaty of peace, was nevertheless within the treaty, and would be judicially so considered if again tried :—That, (however unnecessary the enquiry may be in the present case, supported as it is by sufficient evidence of the law, as it respects the claimant at and before the conclusion of the treaty of amity) it does not appear that any decision of any court within the United States, has since been given, inconsistent with the decisions already referred to ; for the case of *Hamilton* against *Eaton*, decided in the circuit court for North Carolina district, in June 1796, was a case of confiscation affecting persons in the peculiar situation described in the pleadings, under the operation of an act of the State of North Carolina, passed in April 1777, whereby it was among other things enacted, " that all persons being " subjects of the States and then living therein, or who should thereafter come to " live therein, who had traded immediately to Great Britain or Ireland within ten " years then last past, in their own right, or acted as factors, store-keepers or " agents there, or in any of the United States of America, for merchants residing " in Great Britain or Ireland, should take an oath of abjuration or allegiance, or " depart the State ;" and notwithstanding the general grounds and principles adopted by the judges, individually, in declaring their opinions in that case, the judgment (which though not in the last resort, was a binding precedent as far as it went) was no precedent beyond the case described in the pleadings, and which is stated in the passage referred to on the part of the United States, in the opinion then delivered by chief justice *Elsworth*, the said passage being in the following words, viz : " To " bring it within the article, it is also requisite, that the debtor and creditor should " have been *on different sides*, with reference to the parties to the treaty, and as " the defendant was confessedly a citizen of the United States, it must appear " that the plaintiffs *were subjects of the King of Great Britain*, and it is pretty " clear from the pleadings and the laws of the State, that they were so. It is " true that on the 4th of July 1776, when North Carolina became an independent State that they were inhabitants thereof, though natives of Great " Britain, and they might have been claimed and holden as citizens, whatever " were their sentiments and inclinations. *But the State afterwards in 1777, " liberally gave them* with others similarly circumstanced, the option of taking " an oath of allegiance, *or of departing the State*, under a prohibition to return, " with the indulgence of a time to sell their estates and collect and remove their " effects—*They chose the latter*, and ever after have adhered to the King of " Great Britain, and must therefore be regarded as on the British side : " From which the necessary inference is, that if the plaintiffs in that case had not been within the description and operation of the said act of North Carolina, they would

would not, in the opinion of the said learned judge, have been entitled to recover :—And in the case of *Warre*, executor of *Jones*, plaintiff in error against *Hylton*, decided in the *supreme court* of the United States in February 1796, reversing the judgment of the circuit court for the district of *Virginia*, in February 1793, the act of assembly stated in the plea on which the judgment was founded, and payment had been made into the loan-office of the State, was in express terms declared to be no more than an act of *sequestration*; as appears from the recital already given, and the subsequent act of *confiscation* passed in the said State, referring to the said former act, as an act of *sequestration only*, also before recited :—And therefore whatever may have been the extent of general reasoning, adopted by some of the judges who concurred in the said decision of the supreme court, against the judgment of the circuit court, that decision was confined to *sequestration*, and left the law on the conclusive effect of *confiscation* against the right of the original creditor, as it stood on former decisions of competent courts and had been solemnly and unanimously declared by the judges of the said supreme court, in the case of *Georgia* against *Brailsford*, particularly above recited and referred to :—But if it were true that, after the treaty of amity, which made no change upon the law, but secured to certain creditors the benefit of an arbitration, and of relief from the United States, wherever they could not then recover in the ordinary course of judicial proceedings, decisions had been given, in direct and manifest contradiction to what had been solemnly, and even in the last resort declared to be the law, before the said treaty; such subsequent decisions would not affect the claimant's right to a remedy before the Board, unless it could successfully be maintained that his conduct was to be estimated, not by events then past or present, but by subsequent events; that (according to an argument which has been held) decisions in the year *one thousand seven hundred and ninety-six*, were by a technical retro-action of their effect, to be considered by the Board, as information of the law in the year *one thousand seven hundred and ninety-four*, and such information as to subject the claimant to the forfeiture of his rights for culpable negligence, in not having acted then according to the knowledge he thus afterwards received :—Or, that in determining whether a claimant is entitled to proceed before the Board, for want of remedy in the ordinary course of judicial proceedings, the last decision whensoever it may be given, or the last alteration of circumstances in the situation of debtors whensoever it may happen, must be the rule : And if the right to a remedy before the Board, did not by the treaty attach, according to the state of things at or preceding the conclusion thereof, as the period to which all evidence on that head was to relate, and from which, as a fixed and settled point of departure, the Board were to proceed, such must be the rule, with all its consequences of uncertainty, confusion, and incalculable delay :—Nor could it ever be said that the jurisdiction of the Board, shifting with every occurrence, had efficient operation upon a single case till the very moment of a final award; for at any one period of the discussion, the following might be the terms of a representation on the part of the United States.—“ The proceedings before the Board must in this case cease, as a remedy may now be obtained in the ordinary course of justice; it is true that the debt appears to be just, that the debtor

“ was

" was solvent at the peace, and that he became insolvent during the operation of
 " lawful impediments ; but he is *now* again solvent ; it is true, that under the
 " shelter of such impediments he absconded with all his effects, lest the law should
 " change its course, and compel him to do justice, but he is *now* discovered, or
 " some of his effects are to be found in different States, or *fraudulent conveyances*
 " may be detected and set aside in *chancery*, and a recovery thus obtained ; it is
 " true that the courts were shut, or that decisions were given against the creditor,
 " in cases precisely similar, but the courts are *now* open, and decisions have *since*
 " been given in favor of such rights : "—While the following might at some future
 period, before the final breaking up of the Board, be the terms of representation on
 the part of the creditor : " The remedy before the Board was formerly stopped in
 " its course by the then recent solvency, or discovery of the debtor or of his effects,
 " and by a change of decision at law : but *now* again it is restored by the insolvency
 " which has *since* occurred of the same debtor, his having again disappeared, or
 " the course of judicial opinion and practice having returned to its former channel ; "
 —or it might be said, " the creditor has since gone through the whole course of
 " law and legal remedy in vain, and now again appears before the Board, to claim
 " compensation for all that he has suffered, including the loss which has been incur-
 " red through the costly experiments he has made : "—And thus, as every tribunal
 of justice, ordinary or extraordinary, by arbitration or at law, *must afford sufficient*
time and opportunity for substantiating, by the best evidence of which the case is
 capable, such averments, as according to the principles by which they are governed,
 are material and relevant, it never could be known when the course of litigation
 and of legal execution would terminate ; for the period must for ever recede from
 the pursuit, and elude the hope of promised satisfaction ; while under the operation
 of a treaty of *amity* between the two nations, *British subjects*, claiming an exemption
 from the operation of general law, would be placed in array against *American citizens*
 in all the tedious and litigious hostility of actions at law, suits in chancery, and writs
 of execution ; the Board in the mean time, either employing itself in the investiga-
 tion of facts (on the statement of circumstances, the nature and variety of which
 may be conceived from the reference in *one single case* to a list of debtors amounting
 to *several thousands* in number) the whole of which investigation might be rendered
 of no avail by such suggestions as those which have been stated ; or sitting inactive
 for years, till the result of various experiments enabled them to proceed in estimat-
 ing *partial recoveries*, ascertaining and deducting costs of litigation, striking balances,
 awarding compensation for deficiencies, and (under a condition which was
 stipulated by the treaty, for the purpose of enabling the United States to avail
 themselves of such changes as might occur in favor of judicial recovery) *directing*
assignments to the United States, after it had been proved by actual proceedings
 through the whole compass of legal possibility, that all recovery of the debt so
 assigned was impracticable ;—consequences which would inevitably follow from the
 position, that the question of legal remedy may depend upon future events.—But
 whatever might be the conduct of the Board, whether they acted consistently,
 and according to rule, in yielding to such consequences, or disappointed the appli-
 cation

eration of their own principles by the irregular exercise of a loose and arbitrary discretion, every exposition of the treaty *which would in any degree warrant such consequences must be erroneous*: That therefore the experiments which have been suggested and proposed on the part of the United States, as still necessary (before the Board can proceed in this or similar cases) to be tried by judicial proceedings, for the purpose of ascertaining, whether the courts will now determine to be law, that which was held not to be law at the date of the treaty of amity, and set aside the operation of the legislative acts and decisions before stated; so as to afford, if not complete, at least a *partial* satisfaction for the loss sustained, would in all respects counteract the whole tenor and intent of the sixth article of the said treaty, which regarded the state of things at the period of its conclusion, and by which a right to "*full and adequate*" compensation from the United States, was completely vested in those individuals *whose cases were then within the description it contained*; a right not contingent or fluctuating on future circumstances, but perfect and entire; to be carried into effect, not according to the precarious result of different experimental proceedings, in their nature dilatory, and tending from the costs of litigation, and the protraction of dispute, to an increase of the evil; but by one simple and definitive course of remedy, prescribed jointly by the two nations, in the spirit of friendship and peace, for the purpose of speedily putting an end to the only remaining cause of irritation and discontent; and to be exclusively administered by arbitrators whom they have mutually chosen, and invested with ample powers for that wise and amicable purpose.

COMMISSIONERS' OFFICE,

Philadelphia, 26th March, 1799.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. SITGREAVES,

Mr. GUILLEMARD.

In the Case of HANBURY and others, Executors of
MARY HANBURY.

ORDERED—That the general agent for claimants make up and lay before the Board an account of the principal sum and interest claimed in this case; and that the agent for the United States prepare and lay before the Board, a draught

of an assignment of the debt in question to the United States, to be settled and directed by the Board pursuant to the treaty; and that the said account and draught respectively be laid before the Board within eight days.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

In the Case of HANBURY'S Executors.

A STATEMENT of the debt in this case having been presented by the general agent for claimants to the Board, and by their order of the 24th ultimo, leave having been given to the agent for the United States to see and make objections to the same if any he had within eight days. In pursuance of the leave given by that order, the agent for the United States objects to the statement of the debt exhibited by the general agent, in as much as that statement is unprecedented in the courts of England as well as America, whether of law or of equity and is unjust.

The statement is as follows :

Dr.		<i>The United States to the Executors of Mary Hanbury.</i>		Sterling.	
				£.	s. d.
1793.					
Dec. 21.	To the penalty of Stephen West's bond, dated 21st Dec. 1773, payable with interest from date, the said interest at 5 per cent. having equalled the condition in twenty years, - - - - -		740	0	0
1799.					
March 21.	To five years three months interest on 740l. - - -		194	5	0
	Additional interest on 740l. sterling until award, - -		934	5	0

(Errors excepted.)

WILLIAM MOORE SMITH,
General agent.

This

This statement of the general agent is formed, by adding the interest to the principal at the expiration of twenty years from the date of the bond by which time the amount expressed in the condition and the interest on that sum becomes equal to the penalty. The penalty is then considered as the debt due to the claimant, and on which interest is calculated to the time of the award.

It is a settled rule in the courts of equity in England, that interest cannot be calculated beyond the penalty of a bond. So late as 1792 the rule was confirmed by Lord Thurlow on exceptions to a master's report in two cases. *Tew, versus the Earl of Winterton*, and *Knight, versus M'Lean*, 3 Brown, Chan. Rep. 489. 496. As these are the last cases in the equity courts of England on the subject, and as the cases which had preceded these are well examined in the arguments of counsel, the agent for the United States will do no more than refer the Board to them taking it for granted that the rule is now settled in chancery on this subject.

The agent for the United States acknowledges, that a different principle prevails in the courts of common law. There the penalty of a bond is merely a security, and where it is not sufficient the plaintiff may recover damages as well as the penalty. But these damages are interest on the sum in the condition of the bond, not formed from a calculation of interest on the penalty. In *Elliot, versus Davis*, Bunb. 23, interest was decreed to be paid though it exceeded the penalty. In *Lord Lonsdale and others, versus Church*, the court were of opinion that damages for more than the amount of the penalty may be recovered. These cases at law, shew that interest may be recovered beyond the penalty of a bond; but the interest so recovered beyond the penalty, is interest on the principal sum expressed in the condition of the bond, and not interest upon a new capital, compounded of the old capital, and interest thereupon to a certain day as the creditor shall at his mere pleasure determine.

According to the civil law, interest upon interest is not allowed. "Whatever delay there may be on the part of the debtor to pay the interest and whatever may be the cause of it, he is never bound to pay second interest for the interest which he owes. And the creditor cannot accumulate the arrears of interest with the principal sum in order to make the whole a capital which may produce interest; but the same will be reduced to the amount of the principal sum which is capable of producing interest." 1st Domat. 399.

The agent for the United States does not consider it necessary at this time to urge further reasons to the Board in support of his objections to the statement of this debt on behalf of the claimants. The statement he feels confident will not be received by the Board in as much as it is not authorized by the rules of the common law, and is repugnant to those principles of equity and justice which must govern the Board in their determination on claims.

JOHN READ, JUN.

Agent general of the United States.

3d May, 1799.

In the Case of HANBURY's Executors.

AS the Board in rendering their awards will certainly decide as equity and justice shall appear to them to require, the agent for the claimants will make no observations upon the cases referred to in the remarks upon the calculations of interest in this case. Their consciences being satisfied from the merits and circumstance of any particular case, that even compound interest is not too large a measure of damages, they have a right to award it, and no rules of courts in either country are to be absolute and binding upon them; nor can the case of creditors voluntarily delaying any demand for a great number of years be applicable to the case of persons prevented from recovery by the laws of the debtor's country, kept in force contrary to positive stipulation.

There are two other modes of calculation :

- 1st. Simple interest on the condition from the date to the award.
- 2d. Simple interest on the condition from date to the judgment, and then interest on that sum for which judgment ought to have been rendered.

Interest is universally allowed on judgments.

The general agent for claimants is ready to make a calculation on any principle adopted by the Board, to which the claimants are bound to submit.

WILLIAM MOORE SMITH.

10th May, 1799.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 10th May, 1799.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. SITGREAVES,

Mr. GUILLEMARD.

In the Case of HANBURY and al. Executors of
MARY HANBURY.

THE resolution and order formerly proposed on the refusal of the agent for the United States under the direction of the attorney general to comply with the order of the Board in this case of the 26th day of March last, having been moved by Mr. MACDONALD, with the concurrence of Mr. RICH and Mr. GUILLEMARD.

Mr. SITGREAVES moved that the following be substituted in lieu thereof:

The Board having considered their order in this case of the 26th day of March last, and the representation of the agent for the United States thereon dated on the 11th and read on the 12th ultimo, together with the letters from the attorney general of the United States to the said agent accompanying the said representation.

ORDERED—That the said representation and the letters accompanying the same be entered at length on the minutes.

ORDERED—That the general agent for claimants do prepare and lay before the Board, the draught of a release or assignment to the United States to be settled and directed by the Board pursuant to the treaty.

And the question having been put on Mr. SITGREAVES' motion, and Mr. FITZSIMONS and SITGREAVES only, having voted for the same, the said motion was negatived.—Whereupon the question having been put on Mr. MACDONALD's motion that the resolution and order proposed by him should be passed—the same was passed as follows:—viz.

Mr.

Mr. FITZSIMONS and Mr. SITGREAVES dissenting.

The Board having considered their order, in this case, of the 26th day of March last, whereby it was ordered that the general agent for claimants, should make up and lay before the Board an account of the principal sum and interest claimed, which has been done accordingly: And the treaty having provided in favour of the United States that the sum awarded should be paid on condition of their receiving such a release or assignment as the Board should direct; it was also ordered for the purpose of enabling them to carry the said provision into effect in the manner best calculated to prevent all dispute or objections to the form and agreeably to the general practice in business, that the draught of an assignment to the United States, should be prepared by their own agent. And having also considered the representation of the agent for the United States dated on the 11th and read on the 12th day of April last, not applying for any review or alteration of the said order, but directly and peremptorily in the first instance refusing to comply with the same, which representation is in the following terms:—"The agent for the United States not considering it as part of his official duty to prepare draughts of assignments, which when complete and approved of by the Board, were to entitle creditors to the benefit of awards made in their favour, submitted that order to the attorney general of the United States for his opinion and directions. Those directions the agent for the United States has since received which *expressly require him not to prepare for the creditors* the draughts of the assignments they are to execute, the same being no part of his official duty. The agent for the United States accompanies this note with copies of two letters from the attorney general, which contain the agent's directions and the reasons which influenced them." And which directions and reasons are stated in the said letters from the attorney general as follows:—"Being persuaded that it is not your official duty to perform this act and more especially that a *just* regard to the interest of the United States requires you to adopt a proper rule of conduct to be observed in all instances of this kind, I think it necessary to say *that you are not bound to comply with the order*, to which I have referred, or in any other case that at present occurs to my mind, to prepare an instrument of assignment, *and that you ought not to do it*. Since the claimant is to give the release or assignment he is bound to prepare the draught and to lay it before the Board for their approbation; *after this is done* if the Board before they decide upon the draught choose to submit it to your consideration for the purpose of *knowing if any reasonable objection* can be made to it, it will be your duty then to examine it, and to make known your objections if any you shall have." I am fully convinced that the Board cannot impose this duty of a *scrivener of assignments* on any officer of the United States who derives his authority not from the Board or the treaty, but from the president. In the treaty the United States have not undertaken to draw the assignments to be given by the creditors or claimants *and it does not comport with my ideas of the honor of the United States* to admit that the Board may order an officer of the United States to perform a service, which on their part has never been stipulated

“ to be performed by them, nor do I conceive that it will conduce to the interest of
 “ the United States to permit the agent of the United States to prepare the instru-
 “ ments of assignment. In the case of Hanbury’s executors it is remarkable that
 “ the defence of the United States has been placed on the ground that the creditor
 “ having released the debtor by his voluntary act had no right to the money claim-
 “ ed, and it is not denied on either side that the debtor is for ever discharged by
 “ virtue of the agreement between the parties; if this be so, what is there in the
 “ claimant that is assignable? Desirous as I am that the business before the Board
 “ so far as it depends on those employed on the part of the United States should
 “ be conducted conformably to the directions of the Board, yet this desire must yield
 “ to the higher considerations of what is due to the United States. Justice to my country
 “ and its honor too forbid any acquiescence in the opinion that the Board may
 “ compel the United States or any of their officers, without their consent to become
 “ the drawers of releases and assignments for the British claimants.”

RESOLVED—That it would not become the Board to enter into controversy upon this subject. But it does not appear how “ the honor of the United States” can be affected by an order on the agent, whom they have appointed, to prepare the draught of an assignment any more than that of his Britannic majesty by an order on the agent appointed by his said majesty to make up an account: That the Board are dependant for that respect which may be due to their acts on the several governments of the two nations who have entrusted them with the final settlement of important differences; and as it is indeed true that the Board cannot of themselves “ compel” observance of any of their rules and orders for regulating the course of their proceedings, and the conduct in that respect, of the agents practising before them and which by an authority incidental to the greater power of ultimate decision they are entitled to prescribe—therefore and for the purpose of effectuating the determination which the Board on full deliberation and after many conferences had unanimously agreed on to make an award in this case in favour of the claimants—recalled the said order of the 26th day of March last, and ORDERED—That the general agent for claimants, acting under the authority of his Britannic majesty, do immediately prepare and lay before the Board the draught of a release to the United States, to be settled and directed by the Board pursuant to the treaty.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS

COMMISSIONERS' OFFICE,
Philadelphia, 14th May, 1799.

PRESENT, *AS BEFORE.*

THE Board having considered the representations of the agent for the United States respecting the imperfect statement of special circumstances on the part of claimants, and of which he justly complains, as preventing him in many instances from making full answers to the whole matter :

ORDERED—That the agent for the United States make answer in every case with as much dispatch as possible, and in whatever order he may find convenient upon such general objection affecting the whole case as such case may present—As for example, the objection that there was no lawful impediments or that the claimant does not possess a character entitling him to claim.

From which order Mr. FITZSIMONS and Mr. SITGREAVES dissented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 15th May, 1799.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the Case of HANBURY & *als. Executors of*
M. HANBURY.

A DRAUGHT of a release of the debt in this case presented by the general agent for claimants pursuant to the order of the Board of the 10th current, having been read,

ORDERED—That the agent for the United States have leave to see and make objections to and propose alterations on the same within eight days.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 17th May, 1799

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD,

*In the Claim of W. R. LIDDERDALE, Executor of JOHN
LIDDERDALE for the Debt of THOMAS MAN
RANDOLPH.*

RESOLVED—That no legislative act having been passed to repeal the act of assembly of the State of Virginia, made in the year 1777, whereby it was enacted, that it should be lawful for any citizen of Virginia owing money to a *subject of Great Britain* to pay the same, or any part thereof, into the loan office of the State in discharge of the debt, or to prevent the operation of payments into the loan office pursuant thereto against the right of the British creditor, as secured by the 4th article of the treaty of peace;—But on the contrary, the repeal of “all such acts or parts of acts of the legislature of the said common-wealth, as had prevented or might prevent the recovery of debts due to *British subjects*, according to the true intent and meaning of the treaty of peace,” having by the proviso in the act of assembly passed on the 12th day of December 1787, been expressly suspended, on a condition which was never removed:—And the claimant having brought his action in this case, in the circuit court of the United States for the district of Virginia, in which the defendant pleaded payment into the loan office, pursuant to the said act of assembly;—And the said *circuit court of the United States* (established by the act commonly called the *judiciary act*, passed in the year 1789, under the present constitution of the United States) having in the case of Warre, Executor of Jones against Hylton in June 1793, determined on full argument and consideration, that such payments into the loan office were good against the British creditor, notwithstanding the said 4th article of the treaty of peace and the 6th article of the said constitution, declaring “all treaties made under the treaties of the United States to the supreme law of the land,” the recovery of the debt in question was in consequence of the payment into the loan office in this case made, impeded by the operation of the said act of assembly, the effect

effect whereof was so settled and declared by the said circuit court of the United States, under the present constitution, against the right of the British creditor to recover in such cases; and which decision remained the evidence of the law at the date of the treaty of amity, and till February 1796, when the same was reversed by the supreme court of the United States:—And that during the operation of the said act of assembly as a lawful impediment, viz. in the year 1795, the said Thomas M. Randolph, the debtor in this case, died, having in the years 1790 and 1791, in consideration of marriage and marriage portions, made conveyances of lands and other valuable property to a large amount, by virtue of which conveyances it appears from the pleadings before the Board, that the children of the said Thomas M. Randolph, or others, are in possession.—And further that if the claimant were still bound to commence and go through the *ordinary* course of judicial proceedings for the recovery of the debt in question, it would not be incumbent on him (as urged in this case) to “exhaust every means of payment which the laws of the country furnished”—And in particular, that it would not be incumbent on him, as urged in the case of Stanfield, to which the argument in this case refers, to institute proceedings in chancery or otherwise, for the purpose of trying whether conveyances executed by the said Thomas M. Randolph, now deceased, during the operation of the said lawful impediment, could be set aside as fraudulent, such proceedings in chancery, or otherwise, for the discovery and correction of fraud, not being in the *ordinary course of judicial proceedings* for the recovery of debt, within the description and meaning of the treaty of amity.—Referring all other points in this case, and particular the full effect of all facts and circumstances, to shew that the loss charged to have been occasioned by the lawful impediment above stated, “was occasioned by such insolvency of the debtor or other causes, as would equally have operated to produce such loss, if the said impediment had not existed,” “or by the manifest delay or negligence or wilful omission of the claimant.”

From which resolution Mr. FITZSIMONS and Mr. SITGREAVES dissented, stating their intention of placing on the minutes the reason of their dissent at a future day.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

In the Case of HANBURY and others, Executors of
MARY HANBURY.

A DRAUGHT of a release of the debt in this claim to the United States, having been presented to the Board by the general agent for claimants, and leave having been given to the agent for the United States by the order of the Board of the 15th instant, to see and make objections and propose alterations to the same within eight days.

The agent for the United States in pursuance of that order observes, that the draught of the release submitted to the Board by the general agent for claimants, is in his opinion defective.

1st. *Because* the draught does not particularly describe the debt by such words, that it may be specifically known and distinguished from other debts, for which purpose the instrument should contain an apt reference to the evidence of the debt, if there be any such evidence, which also, if in possession of the claimant, should be delivered to the agent for the United States for their use.

2d. *Because* the draught contains words of *acquittance* only, and if the claimants have any right against the debtor to the debt, concerning which the claim for compensation has been made, such right is not transferred to the United States. Though the defence of the United States was in this case placed on the ground that the original right of the claimants was extinguished in consequence of the agreement of the parties; yet it is possibly otherwise. It is supposed by the agent that the instrument of release to be given by the claimant in pursuance of the treaty, should operate not only by way of discharging the United States from the future demands of the claimants but by way of passing to them the interest and right whatsoever it be, of the claimants against the debtors to the debts concerning which the claims are made. A person insolvent at one time may become solvent afterwards, and the United States paying the awards are entitled to the possibility, however small, of obtaining reimbursement from the debtors at a future day.

These objections to the draught are respectfully submitted to the Board.

JOHN READ, JUN.

Agent General for the United States.

20th May, 1799.

COMMISSIONERS' OFFICE,

Philadelphia, 22d May, 1799.

PRESENT, AS BEFORE.

*In the Claim of CLARK, Administrator of RUSSEL, for
the Debt of J. DORSEY.*

RESOLVED—That no legislative act having been passed to repeal the act of assembly of the State of Maryland, made in the year 1780, whereby, after enacting “that all debts and agreements *thereafter made* should be paid or executed agreeable to the bond, promise, or agreement, and the intent and meaning of the “parties, any law to the contrary notwithstanding,” “the debtors of creditors who “had not become subjects and residents of some one of the United States,” were authorized to make payments into the treasury of the State in discharge of the debts due to such creditors; or to prevent the operation of payments into the treasury pursuant thereto against the right of the British creditor, as secured by the 4th article of the treaty of peace; and neither the general act of assembly passed in May 1787, declaring the said treaty “to be the supreme law within the State, nor the 6th article of the constitution of the United States, declaring all “treaties made under “their authority to be the supreme law of the land,” and “binding on the judges “in every State” as such, having the effect of such repeal or to prevent the operation of such payments, as appears, not only from the uniform course of decisions of the high court of appeals, being the highest court of the State, certified to the Board in the case of Hanbury, by the certificate of the proper officer, dated the 19th day of August 1797, and particularly the decision of the said high court in June 1795, in the case of *Harwood against this claimant*, adjudging such payment into the treasury to be good against the British creditor, but also from the judgment of the circuit court of the *United States*, established by the act commonly called the *judiciary act*, passed under the present constitution, in the year 1789, where on full argument and consideration it was determined, in the case of Warre executor of Jones against Hylton, in June 1793, that payments into the *loan office* of the State of Virginia (in their nature similar to payments into the treasury of the State of Maryland) were good against the British creditor, notwithstanding the said treaty of peace; the said decisions of the highest court of the State, and of the circuit court of the United States, under the present constitution, against the right of the British creditor to recover in such cases, remaining the evidence of the law at the date of the treaty of amity, and till the reversal in the supreme court of the United States in 1797, of the said judgment of the high court of appeals of Maryland, in the case of *Harwood against this claimant*, as a case precisely similar in its principles to that of Warre executor of Jones, against Hylton, respecting payments into the loan office of Virginia, in which the judgment of the circuit court of the United States had been

been reversed in February 1796; and the said John Dorsey having been discharged as an insolvent debtor, on the 11th day of December 1788, as appears from the record before the Board, the said act of assembly with the payment into the treasury in this case made pursuant thereto, operated within the meaning and description of the treaty of amity, as a lawful impediment to the recovery of the said debt, to the extent of the said payment into the treasury; reserving the question, whether the said lawful impediment so operated beyond the said payment into the treasury; and further—Reserving all objections to the evidence and amount of the said debt, and the full effect of all facts and circumstances, to shew that the loss “was occasioned by such insolvency of the debtor, or other causes as would equally have operated to produce such loss, if the said impediment had not existed, or by the manifest delay, or negligence, or wilful omission of the claimant.”

From which resolution Mr. FITZSIMONS and Mr. SITGREAVES dissented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 12th June, 1799.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. SITGREAVES,

Mr. GUILLEMARD.

Mr. MACDONALD again moved the order proposed yesterday—the same was passed as follows:

ORDERED—That the agent for the United States inform the Board whether he is in the course of complying with the general order of the 14th day of May

May last, by preparing answers on such *general* objections as occur in those cases in which full answers cannot be made to the whole of the special matter respectively therein contained.

From which order Mr. FITZSIMONS and Mr. SITGREAVES dissented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 12th June, 1799.

PRESENT, AS BEFORE.

In the Case of HANBURY, Executors of HANBURY.

THE Board having considered the objections submitted on the part of the United States to the draught in this case proposed by the general agent for claimants pursuant to the order of the 15th ultimo, stating generally "that the draught does not particularly describe the debt by such words as it may be specifically known and distinguished from other debts, for which purpose the instrument should contain an apt reference to the evidence of the debt, *if there be any such evidence*, and "that the draught contains words of acquittance only."

ORDERED—That the agent for the United States lay before the Board the special alterations he would propose to have made on the said draught. With this observation that there can be no award in any case where there is no evidence, and that in this case the evidence arose from matter of record filed with the claim.

Mr. FITZSIMONS and Mr. SITGREAVES dissented from the said order, and presented the following minute of their reasons, viz.

1st.

1st. *Because* it is in effect renewing upon the agent for the United States an order in this case which the Board have already recalled.

2d. *Because* it implies a censure on the agent for the United States for an expression which is deemed correct and proper, in as much as an award may be founded on a debt, or debts not of specialty, the evidence of which cannot be referred to by terms of apt description in an instrument of assignment.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 21st June, 1799.

PRESENT, AS BEFORE.

*In the Case of JOHN BOWMAN and others, surviving
Partners of SPIERS, BOWMAN and co.*

THE Board having considered the argument stated in the answer in this case in the following words, " But this admission is not meant to wave what has been before contended, *that suits should be brought*, as well for ascertaining the amount as to prove that the payment is not attainable from the debtor, or to excuse the claimants for the neglect of not making personal application for the debts," **RESOLVED** (to prevent misapprehension and waste of time in unnecessary controversy) that *it is not incumbent* on claimants now to bring actions or institute suits, or in any other manner to proceed against the debtor or his estate for the recovery of the debts on which compensation is claimed, or any part of them—without prejudice to the question whether the claimants ought before to have so proceeded, or whether the loss complained of, or any part of it, has been occasioned by the manifest negligence or wilful omission of the claimants, within the intent and meaning of the proviso in the treaty of amity.

From

From which resolution, Mr. FITZSIMONS and Mr. SITGREAVES dissented, stating their intention of placing on the minutes the reasons of their dissent at a future day.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,

Philadelphia, 26th June, 1799.

PRESENT, AS BEFORE.

In the Case of J. BOWMAN, survivor of SPIERS,
BOWMAN & co.

THE Board having considered, that in the answer in this case, the agent for the United States insists that the claim, though supported in all other points, would not be good, even on specialties, for "interest during the war," and that the same general objection is still insisted on in other cases, **RESOLVED**—That by the resolution passed by the Board on the 18th day of December last, they have solemnly determined the contrary, and that agents practising before them are bound to pay respect to their resolutions, by refraining from all argument or opposition on questions which they have distinctly settled.

From which resolution Mr. FITZSIMONS and Mr. SITGREAVES dissented.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 26th June, 1799.

PRESENT, AS BEFORE.

In the Case of GEORGE ANDERSON, *surviving Partner of*
ANDERSON & HORSEBURGH.

THE Board having considered their resolution in the case of *Cunningham and company*, passed on the sixth day of August last, in the following words:—
 “RESOLVED—That so far as the full recovery of the debts in this case claimed,
 “has during the operation of the said lawful impediments been delayed, and
 “the value and security thereof impaired or lessened, or totally lost, by lapse
 “of time, the loss of legal evidence, insolvency of debtors, or otherwise; such
 “delay of recovery, or diminution, or loss of value and security, are to be
 “ascribed to such operation of lawful impediments; unless it be shewn, with-
 “in the provision of the treaty of amity, that such delay of recovery and dimi-
 “nution, or loss of value and security, were occasioned by other causes, which
 “would equally have so operated if the said lawful impediments had not existed;
 “or arose from the manifest delay or negligence, or wilful omission of the claim-
 “ant,” from which resolution *Mr. FITZSIMONS* entered his dissent, on the
 ground stated in his minute of dissent of the 8th day of August last, as follows:—
 “Because, a principle is laid down which throws the whole burden of proof upon
 “the United States in every case where legal impediments existed, contrary as is
 “believed, to the clear principles of law and equity:—*By this decision the creditor*
 “*is excused from proving that his debtor was solvent at the expiration of the war,*
 “or that he has used due diligence for the recovery of his debt; to avoid the
 “payment of the United States must prove the contrary in both instances.” And
 further, having considered that notwithstanding the known meaning and intent of
 the above resolution, as stated and opposed in the minute of dissent before recited,
 it has since been repeatedly, and in almost every case before the Board, maintained
 and argued on the part of the United States, in direct opposition to the said reso-
 lution, or as if no such resolution had ever passed, that the claimant is bound to
 prove the *solvency* of debtors at and subsequent to the peace, as an indispensable
 requisite in support of a claim before this Board, which position, notwithstanding
 the said resolution, whereof the known meaning was so stated and declared in the
 dissent of *Mr. FITZSIMONS*, has been asserted and confirmed in the paper entered
 on the minutes in case of *Inglis*, of the 10th day of February last signed by *Mr.*
FITZSIMONS and *Mr. SITGREAVES*, as follows:—“It is agreed on all hands,
 “that

“ that a claimant must prove a debtor to have been solvent *at the peace*, in order to “ charge the United States with a loss ;” the words “ *It is agreed on all hands*” having been afterwards by leave struck out, but the position still remaining absolute, as an axiom, notwithstanding the above recited resolution ; in consequence of all which, the said resolution or solemn determination of the Board on the point in question, passed after much conference and on mature deliberation, and of which, it never has been suggested, that the meaning was understood to be different from that which is expressed in Mr. Fitzsimons’s dissent, appears now to be held by one of the parties, as not entitled to any consideration, inasmuch, that the agent for the United States in this case declines offering such evidence as he has in his power, to prove the *insolvency* of a debtor at and since the peace, till the claimant has produced his evidence to prove his solvency, as appears from the following passage in the answer :—“ Upon the second point, viz. (that the defendant, Robert Hart, “ was insolvent at the peace, and his estate unequal then and since, to the payment “ of his debts) as this must rest on proof, and from that cause can now require no “ observation, the agent for the United States will endeavor to be prepared, “ *whenever the claimant shall attempt to shew the solvency of Robert Hart at the peace,* “ to produce such proof to invalidate it, as the nature of the testimony offered by “ the claimant may require. *Until such testimony* is offered by the claimant, as “ *well as all other testimony necessary to support his claim,* it will be irregular and “ premature for the agent for the United States to offer any testimony in their “ defence.”

RESOLVED—That it becomes the duty of the Board, to prevent the great disorder and delay which in the course of evidence would arise from the disregard of the said resolution, by enjoining a due attention to the same in conformity to the known and declared meaning of the Board;—that the said resolution, by necessary implication, lays down the rule respecting the *onus probandi* in the matter in question ; and on the plainest principles of reason;—for whatever deprived the creditor of the means, *is in the first instance* to be held as the cause of his not arriving at the end; whatever in the positive institution of the law, or the settled course of judicial practice, prevented him from *proceeding* for the recovery of his debt, is to be deemed a lawful impediment which *prevented such* recovery; consequently the loss arising from his not recovering, is in the first instance, to be ascribed to the operation of the said lawful impediment,—that the above propositions are *prima facie* complete, standing on their own intrinsic evidence, and subject only to the effect of sufficient evidence to the contrary : So that it is not incumbent on the claimant, to prove the *solvency* or capacity of the debtor to satisfy the creditor at or since the peace, but open to the United States to meet the *prima facie* evidence already stated, by reasonable evidence to the contrary;—and although the Board are to be determined by principles of sound reason and justice, and not to be affected by suggestions of hardship or difficulty, yet desirous as they are, in this great national business, to discharge their duty in a manner which may be as generally satisfactory as the natural prejudices of parties interested will permit, they think it not improper, in consideration of the earnest opposition which was made in the Board to the above recited resolution

lution in the case of Cunningham and co. on the ground that it never could have been intended to impose so great a hardship on the United States, to suggest the reflection that it cannot prove a task of greater difficulty to the United States, with all the means of enquiry and information which they possess, and under their responsibility of indemnifying against lawful impediments to the recovery of just debts, to satisfy this Board on sufficient evidence of what must in many instances have been, and may still be matter of great notoriety, viz. that at a certain period a debtor was in such a situation, that according to reasonable inference, he could not have raised money or procured security for the payment of a certain debt, although the full force of legal execution had been brought against him, than it would be to a foreign creditor, perhaps the representative only of him who made the contract, and totally unacquainted with the former situation of the debtor, to bring evidence of the reverse;—the facts and circumstances necessary to establish the latter proposition, being in their nature at least as much affected by the long lapse of time since the peace, when every lawful impediment to the full recovery of the debts in question ought to have been removed, as those by which the former may be substantiated; and such lapse of time, so impairing the means of evidence, being the just cause of complaint, not to the United States, but to creditors only, wherever the delay appears to have arisen from the operation of lawful impediments to the full recovery of debts, fairly contracted before the peace, and protected against such impediments by the 4th article of the definitive treaty.

From which resolution Mr. FITZSIMONS and Mr. SITGREAVES dissented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

To the Commissioners for carrying into effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majesty and the United States of America, on the nineteenth of November 1794.

Representation on the part of the United States relative to the order of the Board of the 12th June, 1799.

IN consequence of the order of the Board of the 12th instant, requiring the agent for the United States to inform the Board, “whether he is in the course of complying with the general order of the 14th day of May last, by preparing an-

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“swers

"swers on such general objections as occur in those cases in which full answers cannot be made to the whole of the special matter respectively therein contained;" the agent for the United States respectfully informs the Board:

That many claims were presented to the Board in a state extremely vague, defective and imperfect, and to these in their present condition he has not yet prepared any answers, intending in the first place to answer those which are more certain and complete.

That he has not considered himself bound in any case, to take for true the statement contained in the memorial, and therefore has considered it his duty, to seek for information concerning the matters set forth in the memorial or suggested by it. As most of the claims are founded on debts said to be due from citizens residing in some of the following States, namely, New York, Maryland, Virginia, North Carolina, South Carolina or Georgia, it has been necessary to seek for information in these States respectively as the case may require, which being remote from Philadelphia cannot fail to take up a good deal of time.

When prepared for making an answer to a claim, the agent for the United States conceives it his duty to set forth every objection, whether general and extending to the whole claim, or special and applying to a particular part of the claim, for he has not permitted himself to suppose, that the above recited order, was intended to infringe or restrain the right which the United States possess of making their answers to claims, whether generally or specially, which their agent shall deem most proper for obtaining a just award in each particular case. A claimant may in one memorial demand compensation for a great number of debts under different circumstances, relative to which different objections may be made, and each objection containing a general principle; for example, one debtor may have paid his debt, another may have been insolvent at the peace, another may have been and is now solvent.

Believing that every claim brought before the Board, is to be determined by equity upon its own circumstances, the agent for the United States is in the course of preparing answers with all possible dispatch, stating as specially and as fully as in his power, all facts not contained in the memorial which have come to his knowledge, and all objections whether general or special which appear to him material for the consideration of the Board. He is not in the course of preparing answers merely of form.

The claimants have been upwards of four years preparing their claims, with the assistance of able counsellors in every particular State, as well as in Great Britain. The amount of claims is computed to exceed twenty millions of dollars. The number of claimants are many hundred, and the number of debts for which compensation is claimed are many thousand. The difficulty of obtaining useful knowledge concerning the multifarious matters necessary to be known is extremely great.

The

The agent for the United States hopes the Board will consider all these circumstances, and allow him reasonable time and opportunity to defend the United States, so that right may be done.

JOHN READ, JUN.

Agent general for the United States.

2d of July, 1799.

COMMISSIONERS' OFFICE,

Philadelphia, 26th June, 1799.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. SITGREAVES,

Mr. GUILLEMARD.

In the Case of ANDREW ALLEN.

The Board taking into their consideration the following passage in the observations on the reply, viz.

“ **I**N the case of Doctor *Inglis*, the Board on the 21st May 1798, RE-
“ SOLVED—‘ That the claimant’s character of British subject was not affected
“ or impaired by the act of attainder and confiscation passed by the State of New
“ York on the 21st of October 1779, attainting him, the Earl of *Dunmore*, Go-
“ vernor *Tryon*, Sir *Henry Clinton*, and many other British subjects, who are
“ therein described, *not as subjects of the State, but as persons holding or claiming*
“ *property within the State*, and forfeiting and confiscating their whole estates real
“ and

“ and personal, for their adherence to his Britannic majesty; but that on the
 “ contrary the said act of attainder, and the description of loyalist or refugee,
 “ applied to the claimant on the part of the United States in consequence of his
 “ said adherence, are conclusive evidence that he still maintained his original alle-
 “ giance: that therefore he is entitled to claim before this Board under the *fourth*
 “ article of the definitive treaty of peace, and the *sixth* article of the treaty of
 “ amity, between his said majesty and the United States.’ “ This resolution has
 “ been exactly recited, because it may be understood to have omitted the case of
 “ the claimant, who in the act of attainder and forfeiture is expressly described as
 “ a subject of the State of Pennsylvania, and punished as such by a forfeiture of
 “ his estates and debts. Indeed the expressions in this resolution seem to imply,
 “ that if Doctor *Inglis* had been attainted as a *subject of New York, and his debts*
 “ *confiscated for a crime committed by him as a subject*, the Board would have dis-
 “ missed his claim. The distinction so explicitly taken by the Board, between
 “ attainting and punishing a man as a *subject*, and attainting and punishing him ‘*as*
 “ ‘*a person holding or claiming property within the State,*’ must have been meant for
 “ some use. At all events, this resolution cannot be considered as deciding that
 “ the *fourth* article of the treaty of peace set aside legislative acts of attainder and
 “ forfeiture, passed against individuals described and holden as subjects of the
 “ State, and punishing them for their criminal conduct. There is certainly a
 “ difference between a confiscation of an enemy’s property by the right of war,
 “ and a forfeiture of a subject’s property by law for criminal conduct:”

RESOLVED—That in the abovementioned resolution in the case of Dr.
Inglis, the Board did not decide on the distinction stated in the above passage to
 be “ between attainting and punishing a man as a subject, and attainting or punish-
 “ ing him as a person holding or claiming property within the State;” having only
 referred to the fact for the purpose of shewing, that the case stood clear of all ob-
 jection on the ground of that alledged distinction.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS

COMMISSIONERS' OFFICE,
Philadelphia, 9th July, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Case of ANDREW ALLEN.

THE following resolution having been the subject of full discussion in the Board during several sittings—Mr. MACDONALD with the concurrence of Mr. RICH and Mr. GUILLEMARD, moved that the same should be passed.

The Board having considered the "*first ground of defence*" taken by the United States in this case, as founded on the act of attainder and confiscation, passed by the State of Pennsylvania against the claimant on the 6th day of March 1778; in the following terms, "Whereas *Joseph Galloway, Andrew Allen, &c.* " *&c. being all subjects and inhabitants of the State of Pennsylvania*, have most traitorously, and wickedly, and contrary to the allegiance they owe to the said State, joined and adhered to, and still do adhere to, and knowingly and willingly aid and assist the army of the king of Great Britain, now enemies at open war against this State and the United States of America, and yet remain with the said enemies :—Be it therefore enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same, that if the said *Joseph Galloway, Andrew Allen, &c.* shall not render themselves respectively, to some one or other of the justices of the supreme court, &c. on or before the 20th day of April next, and also abide their legal trial for such their treasons, then every one of them shall stand and be adjudged, and by the authority of the present act be convicted and attainted of *high treason*, to all intents and purposes whatsoever and shall suffer and forfeit as a person attainted of high treason by law

" ought

ought to suffer and forfeit ;"—and which "*first ground of defence*," taken by the United States on the above act of attainder and confiscation, is set forth in the observations on the reply as follows, viz. "The claimant has stated in his reply, that it is not to be disputed or denied in this case, that the legislature of Pennsylvania proceeded against the claimant as *an inhabitant or subject of Pennsylvania*, and confiscated his whole estate, real and personal, debts included; and the legislative act expresses, that the attainder and forfeiture was inflicted for the crime of high treason." "That the State of Pennsylvania in passing the act of attainder and forfeiture against *Andrew Allen* the claimant, described and considered him as *a subject*, is apparent from the words of the act. If he had not been a subject of Pennsylvania, he could not have committed the crime of treason, of which he was by legislative act attainted. That legislative act is itself evidence, the best and highest evidence of his being a subject of the State. Such faith is due to the act of a legislature of an independent State, that other testimony of the facts contained in it, is not to be required. On the act of attainder and forfeiture therefore, the agent for the United States might rest as sufficient proof, that the claimant was a subject of Pennsylvania. Aware of this, the general agent for claimants has advanced the extraordinary position—that the treaty of peace is the only point of time from which agreeably to the British constitution and laws, the United States ceased to be a part of the British empire.—According to this doctrine, Pennsylvania was not an independent State until the peace, for she could not be an independent State while she remained a part of the British empire. According to this doctrine her legislative acts prior to the peace, are not to be regarded as the acts of an independent State.—This position being important to the just decision of this claim, shall be examined. When the United States became independent and took their place among the nations of the earth, is a matter not to be determined agreeably to the British constitution and laws, but agreeably to the laws of nature and of nations. *In fact they were independent so early as 1775, and on the ever glorious and memorable fourth of July 1776, they solemnly and formally declared to the world they were independent, and from that period have maintained their independence with honor and prosperity.—Prior to the treaty of peace they made treaties of alliance, commerce and navigation, and were thus publicly recognized by foreign powers as an independent nation. They carried on war, they made laws for their own government, and did every other act of a sovereign power. The formal acknowledgment by his Britannic majesty added nothing to their real independence, and if the treaty of peace had never been made, the United States would have actually continued an independent nation though at war with Great Britain to this moment.* What is it the United States were incompetent to do as a sovereign power, between the 4th July 1776, and the 3d September 1783, which they can now do? 'Every nation that governs itself under what form soever without any dependence on a foreign power is a sovereign State, its rights are naturally the same as those of any other State. Such are moral persons who live together in a natural society, under the law of nations. To give a nation

nation a right to make an immediate figure in this grand society, it is sufficient
 if it be really sovereign and independent, that is, it must govern itself by its
 own authority' *Vattel B. 1. S. 4.* 'When a nation becomes divided into
 two parties absolutely independent, and no longer acknowledging a common
 superior, the State is dissolved, and the war betwixt the two parties in every
 respect is the same with that of a public war between two different nations.' *Ib.*
B. 3. S. 295.—"Applying these passages to the situation of the British empire
 when the American colonies separated from Great Britain, *declaring their inde-*
pendence and maintaining it by the sword, they prove the several United States to
 have been independent as early as the *fourth* of July 1776; that day is the
 anniversary of their sovereignty, and as such celebrated in every part of the
 country. In the year 1776, the States generally formed their constitutions of
 government, some of which remain to this moment unaltered; and are consi-
 dered as the palladium of their rights, the source of all lawful authority.
 Even in Westminster hall the judges have frequently declared, that the acts of
 the legislatures of the several States, which were passed during the late war,
 could be regarded by them in no other light than acts of independent States.
 Though *Andrew Allen* after being a subject to Pennsylvania *joined the British*
forces in December 1776, and returned to his natural allegiance this did not dis-
 solve the right of Pennsylvania to hold him as its subject, and as its subject to
 punish him: Having done this by a legislative act, it only remains to be consi-
 dered, whether that act was repealed as to debts, by the *fourth* article of the
 treaty of peace. The agent for the United States contends that it was not,
 and that the debts forfeited for treason during the war, were not embraced by
 that article, because *Andrew Allen*, and all others in the like predicament,
 were civilly dead as to the United States, and were not creditors when the
 treaty of peace was concluded, of the debts that had been forfeited. The
 stipulation that *creditors on either side shall meet with no lawful impediment*
 to the recovery of the full value in sterling money, of all *bona fide* debts here-
 tofore contracted, does not include persons, who *as subjects* had become
 deprived of their estates and debts for their *criminal conduct*; *Andrew*
Allen having joined the American side, as is proved by the highest evidence,
 the legislative act of Pennsylvania, and having deserted it and thereby incurred
 a forfeiture of all his rights, is in no point of view to be considered as a creditor
 on the British side. To conclude, the first ground of defence, if the legislative
 act of attainder and forfeiture passed by Pennsylvania on the 6th of March 1778.
 is to be considered as an act of a sovereign independent State, it is conclusive proof
 that *Andrew Allen* was once a subject of Pennsylvania and had forfeited his estate
 including his debts prior to the treaty of peace, for his criminal conduct as a sub-
 ject. If as a subject he was attainted and punished by the loss of his debts, the
 treaty of peace did not annul the legislative act of forfeiture, and restore to him a
 right to recover his forfeited debts. If the treaty of peace did not restore to him
 a right to recover such forfeited debts, there has been no loss proceeding from a
 violation of it, for which he is entitled to claim before the Board under the treaty
 of amity." And in the following passage in a subsequent part of the paper—
 "The

" The plaintiffs in this case (*Hamiltons vs. Eaton*) were allowed by a law of
 " North Carolina, together with others similarly circumstanced, the option of
 " taking an oath of allegiance to the State or of departing it. They chose the
 " latter and were never regarded as subjects of the State. Their confiscated
 " debts they have been adjudged to be capable of recovering of their debtors.
 " It is not to be denied, that the *Chief Justice Elsworth* in delivering his sen-
 " timents on this case does strongly imply, if the plaintiffs had been claimed
 " and holden as citizens, and for their crime had been deprived of their debts,
 " that they could not have recovered them under the treaty of peace. This
 " opinion the agent for the United States considers as a very respectable sup-
 " port of the first ground of defence taken in this claim;—upon all occasions the
 " chief justice has been ready to allow the fullest force of the treaty of peace
 " upon cases within it, and if debts forfeited for treason are not in his opinion
 " recoverable in the federal court, it can only be because he thinks they are not
 " within the operation of the treaty, for if they were, it is difficult to assign a
 " reason why they should not be recoverable at law, as well as debts confiscated
 " by right of war:—In aid of which argument two letters have been produced
 " from a learned judge of the United States (*Patterson*) to the agent for the United
 " States, in answer to his enquiries respecting the nature and import of certain de-
 " cisions therein mentioned, one of which letters, recited in the *observations* dated
 " the 27th day of May last, gives an account of the case of *Mutter and Hamiltons*
 " against *Moore* therein mentioned, as follows, " The declaration states that *A.* and
 " *J. Hamilton* are subjects of the king of Great Britain. The defendant pleaded
 " that the plaintiffs are on the confiscation act of North Carolina, and payment to
 " the commissioners. The plea states that the said *A.* and *J. Hamilton* were
 " inhabitants of North Carolina, and continued to be so until September 1777.
 " To this plea the plaintiffs demurred. I well remember that it was urged by
 " Mr. Noel, one of the counsel on the part of the defendant, that all inhabitants
 " became citizens by the declaration of independence. On this point the court gave
 " no opinion, it was not necessary; the case did not require it. As it was ad-
 " mitted by the pleadings that *A.* and *J. Hamilton* were inhabitants of North
 " Carolina on the 4th of July, 1776, and continued to be so till September 1777,
 " a period more than sufficient for them to make their election agreeably to the law
 " of nations, I considered them as citizens of North Carolina, and not as subjects of the
 " king of Great Britain. So the law appeared to me as arising on the facts de-
 " tailed in the pleadings. In my judicial capacity I was obliged to take the case
 " from the declaration, plea, and demurrer; but I intimated more than once the
 " propriety of moving to amend the proceedings. It was not done. The decision
 " passed against the plaintiffs. I cannot undertake to say of what opinion the
 " court would have been, if the plaintiffs had replied that they were subjects of his
 " Britannic majesty, and also, the treaty of peace."—The distinction between a
 " British subject, residing in England, and an American British subject, never
 " entered my head. The only enquiry was, whether it sufficiently appeared on
 " the pleadings that the plaintiffs were British subjects and could avail themselves
 " of the treaty."

RESOLVED

RESOLVED on the said "*first ground of defence*," and reserving the other points in the case, that it becomes the Board to refrain from all observation on the *general* questions suggested in the above argument; namely, whether a part of a nation becomes independent of the government which had been established over the whole merely by declaring itself to be so, and supporting such declaration "by the sword?"—whether a part of a nation by thus "carrying on war" against that which had till then been maintained as the government of the whole; "making laws for their own government; and doing every act of a sovereign power," does truly become a sovereign power?—whether the assertion be well founded, that "the formal acknowledgment by his Britannic majesty added nothing to the *real* independence of the United States?"—what would have been the case "if the treaty of peace had never been made?"—whether "the United States would" have actually continued an "independent nation though at war with Great Britain at this moment?"—and how far "the celebration in every part of the country of the ever glorious and memorable 4th day of July 1776," (according to the language made use of before the Board) "as the anniversary of their sovereignty" can affect the present case?—that the Board think it fit also to refrain from all observation on the case which is in substance put, of an *unconditional submission* on the part of Great Britain to the independence of the United States, and to all that had been done under the authority they exercised; because the case so put, is not the case which actually exists; there having been no such *unconditional submission*, or acknowledgment of the independence of the United States on the part of Great Britain, but a recognition by solemn treaty, *containing reciprocal stipulations*, as the price of peace, and for the mutual benefit of *both* countries:—that as it has however been maintained in the Board, that the independence of the United States was complete even as against Great Britain before the treaty of peace, it cannot be improper to state, the impressions entertained on that important subject by judges of great name and authority in the United States, from their opinions judicially delivered, and as the same are recited and referred to in the paper read by Mr. SITGREAVES, and put on the minutes of the Board on the 19th day of February last, in the case of the Right Reverend Charles Inglis:—That in the case of *Watre* administrator of *Jones* against *Hylton*, decided in the supreme court of the United States in February 1795, Judge CHASE, in stating the outline of *reciprocal stipulation* contained in the treaty of peace, expresses himself as follows, "I will now proceed to the consideration of the treaty of 1783. It is evident on a perusal of it what were the *great* and principal objects in view by both parties. There were *four* on the part of the United States, to wit, *First*, An acknowledgment of their independence by the crown of Great Britain. *Second*, A settlement of their western bounds. *Third*, The right of fishery. *And fourth*, The free navigation of the Mississippi. There were *three* on the part of Great Britain" &c. the recovery of debts provided for by the *fourth* article being referred to, as the first of these three objects—and another learned judge of the United States (*Paterfon*) whose opinion in the said case is also recited in the same paper, observes as follows—"The traders and others of this country

" were largely indebted to the merchants of Great Britain. To provide for pay-
 " ment of these debts, and give satisfaction to this class of subjects, must have
 " been a matter of primary importance to the British ministry. This doubtless is
 " at all times, and in all situations, an object of moment to a commercial country.
 " The opulence, resources and power of the British nation, may in no small degree
 " be ascribed to its commerce: it is a nation of manufacturers and merchants.
 " To protect their interests and provide for the payment of debts due to them,
 " especially when those debts amounted to an immense sum, could not fail of
 " arresting the attention, and calling forth the utmost exertions of the British
 " cabinet. A measure of this kind it is easy to perceive would be pursued with
 " unremitting diligence and ardor.—Sacrifices would be made to ensure its success,
 " and perhaps nothing short of extreme necessity would induce them to give it up."
 —Conclusions which are not weakened by the consideration, that although it is
 true the greater part of the "*immense*" debt thus provided for, was due to British
 merchants, part of it was also due (in the language of the treaty of amity) "to
 " others his majesty's subjects."—That another learned judge, whose opinion in
 the case of *M^r Call against Turner*, was published at full length, and specially
 referred to on the part of the United States in their printed answer to the claim of
William Cunningham and co. namely, judge *Pendleton*, expressed himself in the
Virginia convention (of which he was president) when debating on the adoption of
 the federal constitution, as follows: "Congress were empowered to make war and
 " peace. A peace they made, giving us the great object, independence, and yield-
 " ing us a territory that exceeded my most sanguine expectations. Unfortunately
 " a single disagreeable clause, not the object of the war, has retarded the perform-
 " ance of the treaty on our part.—Congress could only recommend its perform-
 " ance, not enforce it."—That in order to determine the present question, the
 Board have only to apply the plain and unambiguous terms of the said *fourth*
 article, for which "*sacrifices*" were thus held to have been, and certainly were
 made on the part of Great Britain;—and that the terms thereof *are* plain and un-
 ambiguous stands confirmed by the respectable authority already referred to. "On
 " the best investigation (says judge *Chase*) which I have been able to give the
 " *fourth* article of the treaty, I cannot conceive that the wisdom of man could
 " express their meaning in more accurate or intelligible words, or in words more
 " proper and effectual to carry their intention into execution"—and judge *Pater-*
son expresses himself thus—"The phraseology made use of leaves in my mind no
 " room to hesitate as to the intention of the parties. The terms are unequivocal
 " and *universal* in their signification, and obviously point to, and comprehend *all*
 " *creditors*, and all debtors previously to the 3d September 1783. In this article
 " there appears to be a *selection of expression*, plain and extensive in their import,
 " and *admirably calculated to obviate doubts*, to remove difficulties, to designate the
 " objects, and ascertain the intention of the contending powers."—"The words
 " *creditors on either side embrace every description of creditors*."—"All creditors
 " on either side *without distinction* must have been contemplated by the parties in
 " the *fourth* article: Almost every word separately taken is expressive of this idea,
 " and

“and when all the words are combined and taken together, they remove every particle of doubt.”—That the same impression of the ample, comprehensive and unrestrained force of the said *fourth* article, is further confirmed by another learned judge (*Sitgreaves*) in the opinion delivered by him in the case of *Hamilton against Eaton*, in June 1796, also referred to and recited in the abovementioned paper, entered on the minutes of the Board in the case of *Inglis*; the said learned judge, in stating the general and unlimited import of the expression “*all creditors on either side*” in the said *fourth* article, where no other distinction of person or character was intended than that of being on the one side or the other at the peace, having therein referred to the several distinctions of character anxiously marked out in the very next article, viz, the *fifth*, where such distinctions were intended, (but which *fifth* article has no relation to the recovery of the debts secured by the *fourth* article) as follows:—“The *fourth* article contains the only stipulation with respect to debts in the whole instrument. It is mutual and *general* in its expression, not limited or restrained by any particular words to any description of persons, as is evident in the *fifth* article. If that had been in the contemplation of the parties, they could not have overlooked the necessity for these distinctions, nor are we at liberty to presume it. In the next article, the distinction is made with great accuracy with regard to those who endeavor to procure a restitution of their lands and other property:”—That the extent equally unlimited of the expression “*lawful impediments*” is likewise referred to and explained by the same, and other learned judges of the United States, whose opinions are quoted in the abovementioned paper, in the case of *Inglis*, judge *Chase* having expressed himself on that subject as follows—“*Shall meet with no lawful impediment* ;” that is, “with no obstacle (or bar) arising from the common law, or acts of parliament, or acts of congress, or acts of any of the States, then in existence, or thereafter to be made, that would in any manner operate to prevent the recovery of such debts as the treaty contemplated.”—“The prohibition that no lawful impediment shall be interposed is the same as that all lawful impediments shall be removed. The meaning cannot be gratified by the removal of one impediment and leaving another; and *a fortiori*, by taking away the less and leaving the greater; these words have both a *retrospective* and future aspect.”—Judge *Paterfon*, “The words shall meet with *no lawful impediment* refer to legislative acts and every thing done under them, so far as the creditor may be affected or obstructed in regard to his remedy or right. All lawful impediments of whatever kind they might be whether they related to *personal disabilities*, or *confiscations*, &c. are removed. No act of any State legislature shall obstruct the creditor in his course of recovery against his debtor.”—Judge *Cushing*, the words “*shall meet with no lawful impediment*,” are as strong as the wit of man could devise to avoid all effects of sequestration, confiscation, or any obstacle thrown in the way by any law particularly pointed against the recovery of such debts.”—And to shew that a lawful impediment might operate within the meaning of the treaty, though there should be no legal debt at the date of the treaty of peace, judge *Wilson* observes, that the *fourth* article “is not confined to debts existing at the time of making the treaty, but is extended to debts theretofore contracted.”

That

That the exposition thus given, *since the treaty of amity*, viz. in the year 1796, by the learned judges of the United States above named, corresponds with the opinion which, on mature deliberation, the Board have clearly formed on this subject, and which they now declare, viz.

That the same instrument, by the *first* article whereof his Britannic majesty on the 3d day of September 1783, "acknowledged the United States" (not to have been from the 4th day of July 1776, but) "*to be free, sovereign, and independent States; that he treated with them as such, and relinquished all claims to the government, propriety, and territorial rights of the same,*" provided also in effect by the mutual stipulation in favor of "*creditors on either side,*" contained in the *fourth* article thereof, that no act which had then been, or should thereafter be done or passed, by or under the authority of the said United States, or any of them, whatever might be its form or import; whatever the terms therein employed; whatever the extent of power thereby assumed or declared; whatever the character *thereby* ascribed to the individual against whom it was directed, should be suffered to operate as a lawful impediment to the recovery of debts "*theretofore contracted*" to a creditor on the side of his Britannic majesty at the date of the said treaty: Nor can the objection be supported, that the above interpretation would extend to the *ordinary operation of criminal law* in cases of felony, and such other offences as did not arise from the part taken by individuals during the war; for such ordinary operation of criminal law thus suggested as the ground of an objection, has no relation whatever to the subject matter of the said article:—That in the case of the Right Reverend *Charles Inglis*, the Board by their unanimous resolution of the *twenty-first* day of May 1798, determined, that an act of the State of New-York passed during the war, attainting the said *Charles Inglis* for the imputed *crime of adhering to his Britannic majesty* was a lawful impediment within the meaning of the treaties; the only difference between that case and the present consisting in the different words of description contained in the two several acts;—but as the act of the State of Pennsylvania cannot have any greater effect or operation against the *fourth* article of the treaty of peace than that of New York, and as the fact charged to be a crime, viz. adherence to the cause of his Britannic majesty is the same in both cases, the mere words of description *assumed* in the act of Pennsylvania, cannot prove *against* the true character of the party as a British subject, or give efficacy to itself, so as to take the case out of the meaning and operation of the said article:—Nor does it appear how the claimant became lawfully subjected to that State any more than the said *Charles Inglis* to the State of New York, or the former less entitled to the character of British subject than the latter:—That all *general* argument on the declaration of independence, and the effect of acts done under it, whether by the law of nations, or by virtue of the alledged retrospect of the above recognition by the treaty of peace, is therefore precluded, so far as regards the present subject, *by the plain terms of a positive compact*:—That the comprehensive expression "*creditors on either side,*" contained in the *fourth* article of the said treaty, *unrestrained by exception, by description of special character, or restriction of any kind*, was evidently selected for the very purpose of avoiding all doubts or difficulties, which

which might otherwise have been raised upon such distinctions of character, as (with reference to a different subject) are anxiously delineated in the article immediately following :—That if the claimant could be said to have at any time *made his election* in favor of the United States under the declaration of independence, and so departed for a time subsequent to that event from his native allegiance, (the contrary of which appears to have been the case) his return to, and having been *on the side* of his said native allegiance *at the peace*, would have secured to him the benefit of the said *fourth* article of the treaty.—That accordingly, having been on the side of his Britannic majesty at the date of the treaty of peace, and being a natural born subject of his said majesty, not barred by the acceptance of citizenship, from the right of claiming against the United States, the claimant is entitled under the treaty of amity, to complain to this Board of the said act of attainder and confiscation before recited, as being a *lawful impediment* within the description of the *fourth* article of the treaty of peace, and the *sixth* article of the treaty of amity, to the recovery of such debts, as he shall prove to the satisfaction of the Board, within the meaning of the said treaties :

And in regard to the statement before recited of the agent for the United States, which has been referred to in the Board as follows, “ even in Westminster hall the judges have *frequently* declared, that the acts of the legislatures of the several States which were passed during the late war, could be regarded “ by them in no other light than acts of independent States.” That no case has ever occurred in the courts of Westminster hall where the above general proposition was so declared ; and occasions have not *frequently* occurred for considering that subject ; nor is it the practice of the judges to enter upon the discussion of matter not necessary to the termination of the question before them : But whatever has been said by any of the judges in Westminster hall which may be held as applicable to the present question, will be found correctly to agree with the principles and conclusions now declared by the Board ;—the said principles and conclusions containing nothing inconsistent with that perfect respect which is due to the independence of the United States, as the same was recognized on the part of his Britannic majesty, by the *first* article of the treaty of peace.

And the said resolution having been read Mr. FITSZIMONS and Mr. SITGREAVES withdrew.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 9th July, 1799.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. SITGREAVES,

Mr. GUILLEMARD.

In the Case of DANIEL DULANY.

Reasons for withdrawing from the Board on the occasion of the order proposed to be made, on the 27th of February 1799, in this case.

1. **BECAUSE** the said proposed order appears to be intended to carry into effect the proceeding in this case, of the 6th August 1798, notwithstanding the protest of Mr. FITZSIMONS in relation to that proceeding.

2. *Because*, from the preliminary reference to certain orders of the 14th and 18th December and the 8th January last, which orders although not assented to by us were not *then* deemed of sufficient importance to induce a separation from the Board, there is ground to apprehend that our presence on such occasions has been and therefore may again be construed into an acquiescence in the validity of the proceeding afore said of the 6th August 1798; which construction we desire to remove and to avoid.

3. *Because*, being perfectly satisfied, on the claimant's own shewing, that the treaty of amity does not give to the Board any cognizance in this case, we are determined not to participate by our presence in the exercise of a power which we believe has not been vested in us.

THOMAS FITZSIMONS,
S. SITGREAVES.

In

In the same Case.

Declaration, by Mr. SITGREAVES, of the reasons for his opinion, that this case is not submitted by the treaty to the decision of the Board.

AS I was not a member of the Board on the 6th of August last; and as no occasion, except the present, has since occurred, which I deemed to be proper for the explanation of my opinion on this case; I now desire to put upon the minutes some reasons which have influenced me to concur in the third proposition of the preceding declaration.

This claim, as I collect from the averments or the admission of the claimant, appears to be preferred by him as residuary legatee of Ann Tasker, for loss which he alleges that he has sustained by the reduction in value of the residuum of the personal estate of the testatrix; inasmuch as many debts contracted to her were tendered to the executor and received by him, in paper money which had depreciated, and which is said to have been within the provisions of an act of the legislature of the State of Maryland, passed in 1777, whereby it was enacted, that bills of credit of a certain description "shall pass current and be received in payment" and discharge of all manner of debts;" and further that if any creditor shall refuse to receive the said bills of credit, when tendered in payment of any debt, such creditor so refusing shall forever be barred from suing for or recovering such debt, or so much thereof as shall be tendered as aforesaid, and the said debt or so much thereof as shall be tendered shall be forever extinguished; and if after such tender and refusal, the creditor shall refuse on demand to give up the evidence of the debt or to give a discharge, it shall be lawful for the debtor to sue for and recover his damages not exceeding the sum due, with costs of suit.

It appears that Anna Tasker the original creditor, and the debtors were inhabitants of Maryland, that the debts were contracted and payable in Maryland, and that Daniel Dulany the elder, the executor, was a citizen of Maryland and so continued from the date of the letters testamentary until his death since the peace, in solvent circumstances, sufficient to meet all pecuniary responsibility on account of his executorship, that the money aforesaid was paid to the said executor before the peace, and that the executor accepted the said payments in discharge of the said debts, and cancelled and delivered up the obligations and other evidences thereof or gave acquittances to the debtors.

Neither the treaty of peace nor the treaty of amity, provided for the retribution of all losses which grew incidentally out of the war. The stipulation of the treaty
of

of peace, is special and restricted to creditors only, "*creditors on either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts heretofore contracted.*"—The sixth article of the treaty of amity reciting that "it is alledged by divers British merchants, and others his majesty's subjects, that debts to a considerable amount, which where bona fide contracted before the peace, still remain *owing to them* by citizens or inhabitants of the United States," and that by reason of lawful impediments since the peace, the recovery of the said debts, has been delayed or the value and security thereof impaired, "so that by the ordinary course of judicial proceedings, the *British creditors* cannot now obtain and actually have and receive full and adequate compensation for the losses and damages which they have thereby sustained," stipulates that the United States in all such cases will make full compensation for the same to the said *creditors*, a claimant therefore must be a *British creditor* of a debt which still remains *owing to him* by a citizen or inhabitant of the United States.

The principle then, which is assumed on this occasion lies at the root of the claim, to wit, "That the claimant, Daniel Dulany, a British subject, became immediately on the death of the testatrix, Ann Tasker, as residuary legatee under her will, entitled to and creditor in equity in, all debts due to the testatrix at the time of her death."—I am of opinion that nothing can be more incorrect than this proposition; that the converse thereof is incontestably true, and that by the known and established rules of law and equity, all the right and interest and power of the testatrix in and over the debts which were due to her, devolved upon the executor, who from the moment of her decease, became both in law and equity, exclusively the creditor of those debts, he alone could lawfully demand payment, institute suits for their recovery, or give acquittances to the debtors, the residuary legatee could do neither, the release of the residuary legatee could not discharge the debtor against the action of the executor; and it is inconceivable that he can be a creditor who has no power to acquit or discharge the debtor:—A residuary legatee has a right only to what remains after payment of debts and other legacies; and the amount of his right must depend upon an account to be taken and a liquidation of the whole; which necessarily pre-supposes the right of the executor to collect, to alien, and to dispose of the assets, in order to make satisfaction for those demands which must precede the residuum. The title of the executor is specific to each and every part of the personal estate, the interest of the residuary legatee is only in the general surplus, after the administration is complete. He is certainly not entitled to all the *debts*, because other demands must be first paid out of them; and of what particular debts will it then be said that he is the creditor, by reason of his residuary interest? Is it the debt of A. or of B? Is it the debt which was discharged in specie, or that which was paid in depreciated paper? The truth is, that he has no right to any, no power over any;—that between him and the debtor there is no sort of privity or relation; while between the executor and the debtor the privity continues in all the force in which it subsisted between the original parties, that the right of the executor is present, positive, and specific; the demand of the residuary legatee is future, contingent, and uncertain.

I believe it therefore to be very clear that the executor, and not the residuary legatee was in law and in equity, the absolute creditor of the debts due to the estate of Ann Tarker, this executor, who became vested with her full power over the debts, as well by her own special confidence and appointment as by the known and settled operation of law, was a citizen of the State of Maryland, and not a British subject. He was entitled to no exemption from the general effect of the laws to which he and the debtors were equally parties, or to any benefit of a stipulation made in favor of the subjects of another nation.

The residuary legatee was not the creditor of any one debtor—he was entitled merely to the residuum after a due administration. If, to his prejudice, the estate had not been duly administered, the executor has been sufficiently responsible, and the remedy against the executor unimpaired by any legal impediment. But if circumstances occurring in the course of a faithful administration, have lessened the amount which he expected the residuum to produce, it is a misfortune which has grown out of the war, but to which the treaties have no reference.

Nor is this a merely *formal* objection : It is properly admitted by the claimant, “ that the treaty made between his Britannic majesty and the United States of America, bearing date the 3d day of September 1783, could not of itself revive his remedy for the recovery of such debts ; the said treaty reviving his remedy only in those cases where the suits could be sustained in the name of a subject of his said Britannic majesty.” And it is substantially true that the treaty of 1794, provided for compensation to such creditors only whose remedy was restored or revived by the stipulation of the former treaty ; which can, by no equitable construction be deemed to require that the established forms of judicial proceeding should be altered in favor of British creditors, or by particular or partial regulations be made to bend or yield to the special case of every individual who had consequentially or incidentally sustained damage by the war. The extravagance of such a doctrine will be illustrated by supposing that in this case, there had been two or more joint residuary legatees, of whom all except the claimant were American citizens. By what strange or complicated perversion of the established modes of suit could the administration of justice in the courts of the country be so modified as to meet the demand of a case thus circumstanced, and agreeably to the doctrine contended for on the part of the claimant, secure his alledged right without impairing the operation of the law in regard to the citizens who would confessedly be bound by it in all its consequences ? It was in effect agreed by the treaty of peace, that a free course should be allotted to the judicial prosecution of the demands of creditors on either side, but not that the course of judicial proceeding should be diverted or led aside from its ordinary channel in every perplexed or fanciful direction which might be thought necessary to facilitate the cause of every claimant. It agreed in effect to restore the creditor to the same situation in which he would have been, if no impediments had been interposed to prevent his remedy ; but not to devise or invent new remedies inconsistent or incompatible with the whole system of jurisprudence. It operated as a repeal of the legislative acts which had

been made impairing the right of British creditors to avail themselves of the ordinary modes of relief; but did not require that laws should be passed to afford them modes of relief unknown before the contest between the two nations.

As the preceding reasons deduced from facts which are peculiar perhaps to this case, are sufficient to determine my judgment and conduct herein, I forbear to enter into the discussion or consideration of other questions which have been raised and which are common to a large class of cases. I only think it proper, in order to prevent misapprehension, to declare that it is perfectly clear to my understanding that the expression, "lawful impediment," in the treaty of peace, can mean only impediments created by the law, and cannot by fair interpretation be extended to include impediments of fact or impediments directly arising from the act of the creditor or his authorized agent.

S. SITGREAVES.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

To the Commissioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majesty and the United States of America.

The memorial of John Bowman, William French, Andrew Buchannan, James Hopkirk, Ronald Crawford and John M'Kee, who survived Alexander Speirs deceased, merchants trading under the firm of Alexander Speirs, John Bowman and company, of Glasgow.

RESPECTFULLY SHEWETH,

THAT the memorialists are and always have been subjects of his Britannic majesty.

That the said house of Alexander Speirs, John Bowman and company, for many years prior to the American revolution, carried on extensive business as merchants in the then colony now State of Virginia, where they had established fourteen different stores under the management and direction of their factors.

That

That at the time their factors were generally obliged to leave Virginia under the act and proclamation for enforcing the statute staple, there were numerous and extensive debts before then bona fide contracted, due and owing to them by different citizens of the United States, at each of their said stores, all of which with the interest thereon accrued, still remained due owing and uncollected, at the definitive treaty of peace between Great Britain and the United States.

Your memorialists further beg leave to state and shew, that notwithstanding every exertion and industry of your memorialists through their agents and collectors employed and sent out at the peace and continued ever since, a very large part of the said bona fide debts still remain due and owing by, and uncollected from divers citizens of the States of Virginia and North Carolina, whose estates were reputed and believed solvent at and since the peace; that the recovery of the said debts has hitherto been prevented by the lawful impediments in the said States, since the peace, which have heretofore been stated to the Board, and that full and adequate compensation for the same cannot now be actually obtained, had and received in the ordinary course of justice; and that the losses and damages they have sustained, have not been occasioned by the manifest delay, negligence or wilful omission of your memorialists.

True and accurate statements of the principal sum of each particular debt yet due, outstanding and uncollected, the names and residence of the several debtors, the nature of each demand, and the dates of the specialties notes and signed settlements accompany this memorial, and your memorialists pray the same may be taken considered and received as forming part thereof.

The said statements or schedules are designated by the marks and figures as follow:

- N^o. 1. List of debts due to Alexander Speirs, John Bowman and company, merchants of Glasgow, at their Petersburg store.—Andrew Johnston, *jun.* last factor.
2. ^o SB Debts due at their Osborne store.
3.  Debts due at their Petersburg store; Emanuel Walker last factor.
4. SB Debts due at their Warwick store.
5. ^R SB Debts due at their Manchester store.
6. ^E SB Debts due at their Prince Edward store.

7. ^C SB Debts due at their Charlotte county store.
8. ^L SB Debts due at their Lunenburg store.
9. ["] SB Debts due at their Halifax store.
10. ^D SB Debts due at their Cumberland store.
11. ^M SB Debts due at their Mecklenburg county store.
12. ^B SB Debts due at their Bedford county store.
13. ["] SB Debts due at their Amhurst store.
14. ^S SB Debts due at their Richmond store.

While your memorialists pray that this their claim may at present be received for each and every of the principal sums stated in the above lists, with legal interest from the times when by the special contracts or the custom of the trade interest became chargeable, to prevent all misunderstanding or any imputation on them, of claiming any farthing not justly due and owing, they think it necessary here to state, that the foregoing lists have been made out for some considerable time past; that in a concern of this magnitude, a regard to their own interest as well as a most sincere desire to lessen the burthen of the United States, dictated the propriety of keeping their agents and collectors employed in endeavours to collect as much as possible from the original debtors or their representatives; that they are yet employed in that business, and your memorialists are not without hopes that considerable credits may yet be given on the above lists.

Your memorialists therefore pray, that they may hereafter be indulged in the privilege of filling additional schedules in which the above named debtors will be classed according to the nature of the demand, the circumstances of the debtor at the peace, during the existence of lawful impediments, and at present, together with the necessary calculations in which schedules credit will be duly and faithfully given for all such sums of money which may have been, or yet may be collected, and from which will be omitted all such demands, if such there are, for which your memorialists on the most mature consideration, shall not think themselves justly and conscientiously entitled to compensation within the true intent, spirit and meaning of the treaty.

WILLIAM MOORE SMITH,

16th October, 1798.

General agent for claimants.

To the

To the Commissioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majesty, and the United States of America, on the 19th November 1794.

The answer on the part of the United States to the memorial and claim of John Bowman, William French, Andrew Buchanan, James Hopkirk, Ronald Crawford and John M'Kee, who survived Alexander Speirs, deceased, Merchants trading under the firm of Alexander Speirs, John Bowman and co. of Glasgow.

NOT admitting or confessing that the several debts or any of them set forth by the claimants, were justly due at the date of the execution of the treaty of peace, to wit—On the third day of September 1783, or remain at this time due, nor admitting that the several persons stated to be debtors or any of them were citizens or inhabitants of any one of the United States when the said treaty of peace or when the treaty of amity was finally concluded, but saving and reserving all just exceptions to the proofs of these matters when any such shall be offered to the Board and the benefit of repelling them by other testimony if necessary, the agent for the United States will proceed to answer the matters in the said claim set forth so far as he has been informed of the same.

On the list of the claimants, Brunswick store, No. 6, Lewelling Williamson appears to be a debtor to the claimants to the amount of £ . . . From an execution issued in the name of the claimants, a copy of which accompanies this answer, it appears that the claimants obtained a judgment against Lewelling Williamson and on that judgment issued the beforementioned execution, tested the 26th of June 1797, which was endorsed to be discharged on the payment of 500 dollars, with interest from the first of September 1783 until paid, and nineteen dollars and sixteen cents costs. To which writ the marshal of Virginia on the 13th of November 1797 returned, that he could find no goods or chattels of the defendant's whereof to make the debt and costs.

From the information communicated to the agent for the United States, it appears that Lewelling Williamson was solvent at the peace in 1783, and continued so a short time thereafter, when he became insolvent during the existence of legal impediments in Virginia, as determined by the Board in the claim of Cunningham and

and company and is insolvent at this time. With a belief of the truth of these facts and on proof of such facts as it is necessary for the claimants to produce to entitle them to claim, to wit—That they were all British subjects at the peace and at the conclusion of the treaty of amity, and that the debt was contracted before the peace, the agent for the United States admits that the United States are chargeable, with the amount recovered against Lewelling Williamson, viz. five hundred dollars with interest from the 1st January 1783 till paid, after the rate of five *per centum per annum*, and on the claimants giving such an assignment of this debt to the United States as the Board shall direct, the same ought to be paid by the United States to them, at such time and place as shall be awarded by the Board.

JOHN READ, JUN.

17th of April, 1799.

Agent general for the United States.

The further answer on the part of the United States to the memorial and claim of the surviving partners of Speirs, Bowman and company.

ON the list of the claimants Richmond store John Smith appears to be a debtor.

From an execution issued in the name of the claimants, a copy of which accompanies this answer which is supposed to be for the same debt as that stated to be due by the said John Smith, it appears that the claimants obtained a judgment against John Smith in the circuit court of the United States for the district of Virginia, and on that judgment issued, the beforementioned execution tested 30th January 1798, directed to the marshal of that district commanding him of the goods and chattels of John Smith to cause to be made nine hundred and six dollars and fifty-two cents, and twenty-four dollars and forty-three cents for damages and costs for the non-performance of a certain promise and assumption whereof the said John Smith was convicted as appears by the records of that court. To which writ the marshal returned he could find no goods or chattels whereof to make the amount, or any part of this execution.

From the information communicated to the agent for the United States it appears that John Smith was solvent at the peace in 1783, and continued so a short time thereafter,

thereafter, when he became insolvent during the existence of legal impediments in Virginia as determined by the Board in the claim of Cunningham and company, and is insolvent at this time. With a belief of the truth of these facts and on proof of such facts as it is necessary for the claimants to produce to entitle them to claim, to wit—That they were all British subjects at the peace and at the conclusion of the treaty of amity, and that the debt was contracted before the peace; the agent for the United States admits, that the United States are chargeable with the amount recovered against John Smith, to wit—Nine hundred and six dollars and 52 cents with interest from the judgment, after the rate of five *per centum per annum*, and on the claimants giving such an assignment of this debt to the United States as the Board shall direct, the same ought to be paid by the United States to them at such time and place as shall be awarded by the Board.

JOHN READ, JUN.

Agent general for the United States.

9th of May.

Additional Memorial and special averments for evidence in the claim of Speirs, Bowman and company, for compensation for debts contracted at the following stores, viz.

LUNENBURG,
HALIFAX and
MECKLENBURG, } *In Virginia.*

THE memorialists respectfully referring to their memorial and claim already before the Board, and to the several matters and things therein contained, more particularly to their engagement to arrange their several debts under proper classes, so that an investigation of them might be rendered more easy, and to their request for time to make such arrangement, beg leave now to state that in the several schedules which accompany this their additional memorial, they have omitted every debt supposed bad at the peace, or which might probably have been lost if no lawful impediment had existed since the peace, they have stated only the actual loss sustained upon many debts partially paid since the peace, and they have classed every debt or part of debt claimed in the following order :

A.

A. Debts on open accounts, signed accounts, or notes without seal, &c.

These debts cannot be recovered for the following reasons :

1. The open accounts can only be proved by the store books, which the courts will not now admit as evidence, and which would have been admitted, and were never disputed before the war.
2. The signed accounts, notes, &c. are all barred by the act of limitation, and were so barred during the existence of lawful impediments, but were not so barred at the peace, if the courts had been open.

B. Debts on specialties, solvent at the peace and become insolvent during the existence of lawful impediments.

C. Debts on specialties from persons yet reputed solvent, from whom a recovery may probably be had, except such deductions of interest as juries may chuse to make and courts to sanction.

D. Debts on specialties from persons who are dead, and their property divided, or who have removed during the existence of the impediments or whose residence and present circumstances are unknown.

E. Losses sustained by deductions of interest on debts settled by payment, or giving new bonds without suit.

F. Losses sustained by deductions of interest made by juries, &c.

In a column of remarks, and opposite to the name of each debtor, are stated such facts as are deemed material, and the names of the witnesses by whom the same may be proved.

The following is the testimony by which the claimants expect to support their claims and is the best now in their power.

LUNENBURG STORE.

John Patterson their factor at the said store is dead ; his hand writing can be proved by Christopher McCormic, Esq. of Petersburg and Jonathan Patterson, who has removed to Kentucky to a regular set of books—James Burns was his assistant ; it is not known what is become of him ; his hand writing can be proved by the above gentlemen. There is no person who can prove the delivery of the goods, and the books are the only evidence of the open accounts. Henry Stokes, Peter Stokes and others of Lunenburg ; John Ballard, Newman Dortch and others of Mecklenburg, and Jonathan Patterson now of Kentucky, can prove the solvency, insolvency, deaths,

deaths, removals, &c. as stated in the remarks. Their affidavits are already taken ex parte, and the accounts have all been correctly copied and ready to be compared with the books, in the presence of any person who may be appointed for that purpose. The sum total claimed at this store is fourteen thousand six hundred and forty-five pounds, fifteen shillings and five pence halfpenny, with additional interest from the first day of June 1798, to which time interest is calculated in the schedule.

John Patterson and James Burns aforesaid, are the witnesses to most of the bonds; Henry Stokes and others to some few—Newman Dortch, at present in Philadelphia, can prove the several deductions of interest that they were submitted to from the conviction that it was the utmost sum that could be obtained in any case even upon bond, and that most of the debts so settled at this store were accounts on which nothing could be recovered at law.

HALIFAX STORE.

The amount of loss at this store for which compensation is claimed, is twelve thousand three hundred and twelve pounds six shillings and ten pence half penny, with additional interest from the first day of June 1798, as aforesaid.

John Calder the company's factor at this store, is dead. Hector McNeil who was the assistant, lives in Petersburg Virginia, and is the witness to the signed settlements generally, he can prove the books and the hand writing of said Calder, who is a witness in some instances. Remarks are also pretty generally made opposite to the names of the debtors, the truth of which can be established by Hampton Wade, James Boyd and others of Halifax, William Willis and Spencer Speed of Mecklenburg, and Peter Stokes of Lunenburg, and Newman Dortch, above named.

MECKLENBURG STORE.

The amount of loss at this store for which compensation is claimed is nine thousand one hundred and ninety-two pounds three shillings and one farthing with additional interest from the first day of June 1798, as aforesaid.

Thomas Banks the company's factor at this store lives in Manchester Virginia; he is very infirm and in the different suits brought by the company in Mecklenburg, his deposition has been taken on account of his infirmity.

John Brown was his assistant; it is not known what is become of him—they are the subscribing witnesses to the specialties &c. generally at this store, and the hand writing of Brown can be proved by Mr. Banks.

N

Remarks

Remarks are made to the names of the different debtors at this store, the truth of which can be proved by John Holmes, John Ballard, Lewis Parkam, Thomas Burnett, Spencer Speed, and others of Mecklenburg, and the said Newman Dortch. At this store there is a claim under class F for deductions of interest by judgments and verdicts in fifteen suits. The records of all those suits are obtained and ready to be delivered herewith. In every other case at each of the said stores where any matter of record is stated in support of the claim, copies will be procured as soon as possible they have long since been applied for and promised to be made out as soon as the officers can obtain time for the purpose.

The said Newman Dortch who superintended the transcribing and arranging these lists and the copying and comparing the accounts with the original books can also prove that no claim is brought forward therein for any debt deemed bad or suspicious at the peace.

These three stores being near each other and the witnesses offered in support of the claim being in the same neighbourhood, the claimants have joined them in this supplementary memorial particularly as all the books of the said stores are now at one place, the house of Mr. Thomas Vaughan in the county of Mecklenburg.

The memorialists in filing their supplementary memorial and averments for the claims at their other stores, will pursue the same conduct as in these, and if any improvement in the arrangement shall appear practicable, in the course of examining into the present claim and before the other supplementary memorials are finished so as to facilitate the enquiries it will be adopted, if it can be so done without a loss of time which would over-balance the benefits to arise from such improvement.

WILLIAM MOORE SMITH,

General agent for claimants.

23d April, 1799.

To the Commissioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majesty and the United States of America, on the nineteenth of November 1794.

The answer on the part of the United States to the additional memorial and special averments for evidence in the claim of Speirs, Bowman and company for debts contracted at their Lunenburg, Halifax and Mecklenburg stores.

THE incomplete state of the original memorial and the schedules of debts filed with it by these claimants, rendered it improper on the part of the United States, to answer the claim in that State, and more particularly as the claimants prayed

prayed to be indulged in the privilege of filing additional schedules in which the debts were intended to be properly classed according to the nature of the demands, and other information given, which was necessary to a proper understanding of the claim. This the claimants have done with respect to three of their stores, to wit, the Lünenburg, Halifax and Mecklenburg stores in their additional memorial which will now be observed on.

The debts claimed of the United States as due at the three stores before mentioned, are divided into six classes amounting with interest to the 1st June 1798, to £36,150 5 4½.

The first class of debts on list A are represented to be due on *open accounts, signed accounts, or notes without seal &c.* and that they cannot be recovered because the store books will not now be admitted as evidence, which would have been admitted before the war. That the signed accounts, notes &c. are all barred by the acts of limitation, and were so barred during the existence of lawful impediments, but were not so barred at the peace. With respect to these debts, it must appear that the operation of laws in Virginia contrary to the treaty of peace, have impeded the recovery of them, and that the same are not recoverable in the ordinary course of justice that payment has been demanded by personal application to the debtors, and if denied, that recourse has been had to some tribunals of justice having competent jurisdiction, which recourse has been unsuccessful, even though lawful impediments have existed in Virginia for a certain space of time, yet since the adoption of the new constitution in 1789, there have been none. At all times personal application might have been made to the debtors, and it is to be presumed they would have made no difficulty in the cases of accounts or settlements, if the balances were really due.

The claimant in his original memorial states that "notwithstanding every exertion and industry of the claimants through their agents and collectors sent out after the peace, a large part of the said debts remains uncollected." The agent for the United States insists that the claimants be required to produce proof of their agents, having used "every exertion and industry" to collect these debts for having said they used every exertion and industry to collect their debts it is reasonable to require proof of it. Nothing would be more unreasonable than to make the United States pay claims against individual citizens, to whom the creditors have neither actually or legally applied for payment, and to whom they have never given notice that such claims against them, are in existence.

As to the assertion in the claim that the store book which was never disputed before the war will not now be admitted to prove their open accounts. It is observed that the acts of 1748 and 1755, which permitted this description of evidence, which is unknown to the common law never have been repealed and exist at this moment in full force relative to these debts; and if the claimants have

not

not the means under those laws of proving their debts more than they had before the war, it is because the requisites of those laws have not been complied with, and is attributable to their laches. As this subject is very fully observed on in the answer in the case of Cunningham and company, from page thirty-two to page thirty-six, both inclusive; the agent for the United States will rest satisfied with referring the Board to that argument.

The operation of the acts of limitation on this description of debts has been remarked on in the answer to the claim of Dinwiddie, Crawford and company, under the head of their upper Mecklenburg store and in other cases to which the agent for the United States prays leave also to refer the Board.

2d. As to the second class of debts due on specialties where the debtors were solvent at the peace and became insolvent during the existence of lawful impediments. If it be satisfactorily proven to the Board on the part of the claimants that the legal impediments decided by the Board to have existed in Virginia contrary to the treaty of peace prevented the recovery of these debts, that each debtor was solvent at the peace; and became insolvent during the existence of those impediments, and is so now, and that the sum stated to be due from each debtor is justly due; in each and every such case it is admitted, the United States are responsible to the claimants except for the interest during the war; but this admission is not meant to wave what has been before contended that suits should be brought as well for ascertaining the amount as to prove that the payment is not attainable from the debtor, or to excuse the claimants from the neglect of not making personal application for the debts.

3d. As to the third class of debts on specialties from persons yet reputed solvent from whom a recovery may probably be had except such deductions of interest as juries may choose to make and courts to sanction. It has been uniformly contended on the part of the United States that claimants are bound by a fair interpretation of the treaties, and by the principles of common justice, to resort to their debtors to recover from them all that is in their power, that if any thing remains due after this for which a claim can be supported under the treaty of amity, that then and only then can a claim be made before the Board for such deficiency. The stipulations of that treaty never imposed on the United States the collection of all outstanding British debts which had been contracted before the late war, and were remaining due from American citizens to British subjects. It is not denied that the creditors loss described in the treaty must be fully compensated: But that part of a debt cannot be considered as lost which the debtor is able and may be compelled to pay in the ordinary course of justice.

4th. As to the fourth class of debts, represented to be due on specialties from persons who are dead and their property divided, or who have removed during the existence of the impediments, or whose residence and present circumstances are unknown.

unknown. It is insisted on the part of the United States, that although the debtor is deceased, and his property has been divided, it does not follow that the United States are to be awarded to pay the debt. By the laws of Virginia the personal property of the deceased is liable in the hands of his representatives to pay all his debts, and the lands and real property of the deceased are liable in the hands of his heirs or devisees to pay his specialty or judgment debts, and therefore where the estate is so liable it ought to be pursued by the creditor. Virginia Laws, Revival of 1794, page 54. Nor although it has been squandered either by the deceased in his life time or by his representatives, does it follow that the United States are to be awarded to pay the debt. If the creditor has neglected for a long time to prosecute the debtor, or his representatives when he might have prosecuted them, and in this interval the estate has been wasted the loss ought to remain with the creditor for his wilful laches. The removal of a debtor from one county to another, or from one State to another, or the creditor's want of knowledge at this day of the residence and circumstances of his debtors, cannot form a subject of complaint, or give creditors a right to claim compensation from the United States.

5th. As to the fifth class of debts represented to be for losses sustained by deduction of interest on debts settled by payment or giving new bonds without suit. These deductions it is stated were submitted to form a conviction that it was the utmost that could be obtained even upon bond, and that most of the debts so settled at the Mecklenburg store were accounts. Interest in these cases where the creditors and debtors resided in Virginia at the time the debts were contracted in retail dealing is not justly recoverable. It was not the practice for juries in Virginia for goods sold before the war, to allow interest, the refusal of which induced the merchants to sell their goods at higher prices. The exorbitancy of price compensated for the denial of interest which was generally refused by the juries.

This subject is observed upon in the answer to Cunningham's case, pages 62 and 63, and what is there stated is proved to be true by the letters from the judges, and other learned gentlemen in the jurisprudence of Virginia, laid before the Board by the agent for the United States at different times in that case, to which the Board are respectfully referred.

6th. As to the claims for losses sustained by deductions of interest made by juries, &c. This description of claims is submitted to the Board with the observations frequently before made on them on the part of the United States.

Some remarks will now be made on the testimony by which the claimants expect to support their claim and which they say is the best in their power.

The Board in their resolution of the 18th December 1798, resolved that
 " they will receive such evidence only to prove the debts which are the subjects of
 " claim before them as would have been competent and admissible to prove the same
 " immediately

" immediately previous to the operation of lawful impediments in the courts of the States where the debtors at that time respectively resided ; unless upon special cause first shewn, and an order of the Board for the admission of evidence of any other description." To have entitled the claimants to the proof of their book debts in the courts of Virginia the following circumstances would have been necessary : The plaintiff at the trial would have been called on to swear or solemnly affirm that the matter in dispute was a store account, and that they had no other means to prove the delivery therein contained. The oath or affirmation is to set forth, that the book contains a true account of all the dealings or last settlement of accounts between the parties, and that all the articles therein contained were bona fide delivered, and that all just credits have been given to the defendant. Such book accompanied with the oath or affirmation would have been received as good evidence to prove the delivery of the articles within two years before the suit was brought, but not for an article of a longer standing, unless the defendant had removed from the county where the debt was contracted, then the time was to be extended to three years. A copy of the book with the like oath or affirmation, would have been received in the place of the book, unless the book was required to be produced at the joining of the issue. If the creditor who delivered the merchandize was dead, his executor or administrator on making oath that there were no witnesses to his knowledge to prove the delivery of the goods, and that the book was found so stated, and that he does not know of any just credit to be given ; might give such book and oath in evidence for any articles delivered within the time aforesaid. The factor of a merchant resident in Great Britain or Ireland was allowed to take the same oath to his book of accounts or to a copy thereof which was admissible evidence in like manner and under like limitations, as was imposed on the creditor.

Each account should exactly appear before the Board, that the date and amount of each item may be seen for the purpose of ascertaining what part is within the operation of the acts of 1748 and 1755, to which reference has been made.

Proof of the hand writing of John Patton formerly factor at the Lunenburg store, who is now represented to be dead, is offered to prove the book debts due at that store. The death of a factor at a store rendering it impossible to comply with the requisites prescribed in the two acts, as before particularly stated, in the like manner as if he had been living, which the provisions of those laws had in view ; the courts in Virginia admit proof of the hand writing of the factor and clerk or assistant in a store who made the entries in the store books of original entries. In the additional memorial it is not stated that *John Patton made the entries in the store books of original entries*. As the proof of this fact would be required in the courts of Virginia to entitle such evidence to be admitted there, some sufficient cause should be shewn to the Board according to the terms of their resolution to satisfy them to dispense with it, or the Board cannot consistently admit it.

These

These observations apply also to the evidence to prove the book debts at the *Halifax* store.

Thomas Banks the company's factor at the Mecklenburg store is represented to be still living; if his evidence is to be taken to prove the book debts at this store, it is insisted that it should be admitted only in the manner in which such proof would be received in the Courts of Virginia, unless sufficient cause is shewn to the Board to depart from their resolution on this subject.

JOHN READ, JUN.

Agent general for the United States.

4th June, 1799.



To the Commissioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, between his Britannic Majesty and the United States of America.

The Memorial of Charles Osborne, of Yorkshire, in the kingdom of Great Britain, Esquire.

RESPECTFULLY SHEWETH,

THAT your memorialist is a natural born subject of his Britannic majesty.

That on the fourteenth day of March 1771, William Nicholls, Phineas Bond and Samuel Mifflin, of the city of Philadelphia, were justly indebted to your memorialist in the sum of six hundred pounds Pennsylvania currency, for the payment whereof in one year from the date with lawful interest at six per cent, they executed their joint and several obligation in the penalty of twelve hundred pounds like money.

Your memorialist further shews, that William Nicholls died insolvent; that afterwards in the year 1773, Phineas Bond died leaving assets, and Samuel Mifflin died leaving assets, and that the representatives of the solvent obligors at the treaty of
peace

peace between Great Britain and the United States were citizens of Pennsylvania, possessed of assets sufficient to discharge all the debts of the said deceased solvent obligors.

Your memorialist further shews, that the principal and interest of the said bond remained due and owing at the conclusion of the said peace to your memorialist, that the executors of the said Samuel Mifflin not denying their obligation to pay the said principal and the interest on the same, except interest during the war, absolutely refused to pay their equal proportion or half part of the said debt unless a deduction of the said war interest was made, which your memorialist did not think himself under any obligation of equity or justice to allow.

Your memorialist further begs leave to state and shew, that a suit was thereupon commenced upon the said obligation which came on to trial in the supreme court of Pennsylvania in July 1787, a transcript of the record of which will be produced, and at the said trial, the jury impaneled to try the issue under and in conformity to the express charge of the court, deducted six years and an half year interest from a debt bona fide contracted before the peace, and then due and owing to the memorialist, a subject of his Britannic majesty.

Your memorialist further states and admits, that the representatives of the said Phineas Bond did not avail themselves or attempt to avail themselves of the advantage of the said verdict but so far as the estate of the said Phineas Bond was in equity and justice answerable for one half of the debt aforesaid, after the insolvency of the said William Nicholls, the same with full interest has been settled and satisfied.

Your memorialist states and avers the opinion and verdict aforesaid to have been a lawful impediment since the peace, by which he has actually sustained a loss of one hundred and seventeen pounds money of Pennsylvania, the amount of six and an half year's interest on the one half the said bona fide debt, and the further loss of interest upon the said £117, at the rate of six per cent. per annum, from July 1787, when the same according to treaty ought to have been recovered, and would have been recovered but for the lawful impediment aforesaid.

Your memorialist therefore prays, that his claim may be received for £117, Pennsylvania currency, with the interest as aforesaid, and such award made thereon as equity and justice shall require.

WILLIAM MOORE SMITH,

General agent for claimants.

20th November, 1798.

In the Claim of CHARLES OSBORNE.

BEFORE making defence against this claim the agent for the United States feels it his duty to represent that Charles Osborne resides in Great Britain, and it does not appear from any document before the Board that the claim has been made with his privity or consent or for his benefit, but on the contrary it may have been made at the mere instance of a stranger who without authority has thought proper to bring forward this claim, to try a question of the most momentous consequences.

The agent for the United States submits to the Board, whether it is not just and reasonable that there be produced, previous to the filing the answer of the United States in this case, some satisfactory evidence that the claim has been made with the knowledge and by the direction of Charles Osborne or his attorney duly authorized.

It is evident that the United States will necessarily incur great expences in their defence against the many various claims that have been produced; and the agent for the United States believes there can be little doubt, that the Board has not authority in any case where the claimant shall fail to make good his complaint, to award that he shall reimburse to the United States the necessary expences incurred in their defence. This consideration it is hoped will alone point out the justice and reasonableness of requiring satisfactory evidence by sufficient powers of attorney or other documents, that the claim made in the name of an absentee has been duly authorized by a subject of his Britannic majesty, for his own use and benefit and of postponing until such evidence shall be produced the answer and defence of the United States.

By the orders of the Board of the 5th December 1798, and 8th January 1799, claimants are required to lay before the Board the powers of attorney or other authorities by virtue of which claims have been presented. In but few cases have these orders been complied with. In the present case it could be immediately known whether Charles Osborne had authorized any person to file this memorial, in his behalf, and whether a power of attorney is now existing which gives this authority. In such a case where the order of the Board can be immediately obeyed, it is deemed reasonable it should be, if it cannot, according to the spirit of the resolution of the 15th July last, notice of the same ought to be given to the Board, that the United States may not be put to the trouble and expence of enquiries which may be useless from the want of the necessary powers to make the claim.

In

In this case the memorial makes mention of a record that is not laid before the Board, and the agent for the United States will take occasion now to observe that in many instances the memorials refer to papers *as part thereof*, which are not with them laid before the Board, and frequently those papers are so material that answers cannot be made before they are inspected. It would tend very much to expedite business, if the papers referred to in the memorial *as parts thereof* were at the same time exhibited. In such cases where the complaints are so incompletely presented if the answers on the part of the United States are not made, the Board will please to ascribe the delay, not to them but to the claimants.

JOHN READ, JUN.

Agent general for the United States.

9th May, 1799.

In the Claim of CHARLES OSBORNE.

IN this case the general agent for claimants now files a power of attorney from the claimants to Mr. W. Bond, and in no instance has he yet filed a claim unless at the instance of attorneys, in fact regularly constituted, or of the parties personally present or some one partner of a firm.

True it is that in most instances the powers of attorney are in the most general and ample form to transact all the business of the grantors in as full and ample a manner to all intents and purposes, as if they were personally present, and in general these powers were executed shortly after the peace; it is in the correspondence between the claimants and their attorneys, that instructions are given to prosecute the claims before the Board.

Most of these powers will be wanted by the attorneys for other purposes after the Board may break up, and have hitherto been detained for the purpose of collecting as much as possible from the debtors, and to produce if called for at any trial of causes yet undetermined.

The general agent has long since given particular instructions to the claimants to send out new and special powers " to make and execute all such releases and assignments "

"ments as shall be directed by the Board, &c." some of these have arrived and are filed, and duplicates since have come to hand.—He is in daily expectation of the rest, and among them, the special power from the present claimant.

WILLIAM MOORE SMITH,

General agent for claimants.

22d May, 1799.

*To the Commissioners for carrying into Effect the Sixth Article of the Treaty of Amity
Commerce and Navigation, concluded between his Britannic Majesty and the United
States of America, on the 19th November 1794.*

The answer on the part of the United States to the memorial and claim of
Charles Osborne.

THE memorial represents that William Nicholls, Phineas Bond, and Samuel Mifflin were indebted to the claimant by their joint and several bond dated the 14th March 1771, in £1200 Pennsylvania currency conditioned for the payment of £600 one year from the date of the bond, with lawful interest at six per cent. per annum. That William Nicholls died insolvent in 1773. That Phineas Bond and Samuel Mifflin died leaving assets. That their representatives were citizens of Pennsylvania, and possessed assets sufficient to satisfy all their debts. That a suit was commenced on the said bond in the supreme court of Pennsylvania, and on a trial of the cause at the June term 1787, the jury in conformity to the charge of the court disallowed interest during the war. The claimant states the opinion of the court and verdict of the jury to have been a lawful impediment since the peace, by which he has sustained a loss of £117 money of Pennsylvania, being for six and one half years interest, which with interest on that sum from July 1787, forms the amount of the present claim.

The defence against this claim rests on the ground, that in the State of Pennsylvania, no laws operated against the treaty of peace, and the judgment of the court, independent of, and unconnected with any such law, is not of itself a lawful impediment within the meaning of the treaties.

It

It is not alledged by the claimant that the verdict and judgment of which he complains, was connected with, or dependant upon, any legislative act of any of the States contravening the treaty of peace in the State of Pennsylvania, where the debt which is the foundation of this claim was contracted, and where the debtors resided, no such act of the legislature was passed or permitted to operate after the conclusion of peace. In the State of Pennsylvania the course of justice ever since the peace, has been as free and unimpeded in respect to British creditors as it was before the war. The demands of British creditors against American citizens which have been prosecuted in the courts of that State, have been judicially decided and ascertained according to the same principles and rules of law and equity that prevailed there before the war; and justice has been impartially administered in those courts without distinction of persons, whether British subjects, or American citizens. The verdict and judgment of which the claimant complains was rendered in the supreme court of Pennsylvania, in the same form and under the same laws which were in force before the war. The contract was originally made subject to the laws of Pennsylvania, which submit to the discretion of juries and courts the allowance, or disallowance of interest according to equity. The contract has been carried into effect and satisfied according to the laws in force where it was made, and no new law whatsoever has been introduced on the subject determined by the jury and court. This is all that justice required, and more than justice the fourth article of the treaty of peace did not require. This treaty is not to be understood as requiring the institution of new laws or new tribunals for the recovery of debts contracted before the war. The lawful impediments meant to be removed by the treaty of peace, were impediments proceeding from or connected with *legislative acts* subsequent to the commencement of hostilities. In this case the verdict and judgment being entirely independent of any legislative act contravening the treaty of peace, is not a lawful impediment in the contemplation of that treaty, but the disallowance of interest being made by a competent tribunal in pursuance of ancient forms, upon principles of equity recognized before the war is not to be imputed to the operation of a lawful impediment, contrary to the treaty of peace. If the matter complained of may be called a loss, it is not a loss proceeding from the violation of that treaty. It was intended by the fourth article of the treaty of peace that the courts of justice should be completely open to the recovery of British debts in sterling value, and the courts being open and no law existing contrary to that treaty, all was done that the treaty required.

It may be stated as an uncontroverted proposition, that no loss or damage is to be retributed by the United States under the treaty of amity, unless it has been occasioned by a violation of the treaty of peace. In those States where no lawful impediments, or in other words no legislative acts or statutes containing impediments to the recovery of British debts had been permitted to operate after the peace, no case of loss or damage arising from the verdict of a jury and judgment of a court can have occurred that is embraced by the sixth article of the treaty of amity. It was not to enquire into and adjust the complaints of British subjects for losses and damages

damages occasioned by judgments of courts rendered in States where no legislative acts contrary to the treaty ever operated, and which therefore could not have been influenced by any such legislative acts, but such losses and damages only as had been occasioned by the operation of *laws* impeding the recovery of British debts. When the demand of a British creditor shall have been fairly and regularly ascertained by the judgment of a competent court free from the operation of any legislative act contravening the treaty of peace, such judgment is definitive as to the amount of the sum, principal as well as interest; and when such judgment shall have been satisfied, there can be no foundation for an application to the Board for compensation for a supposed loss arising from such a judgment. Legal judgments on the real merits of the demand where no question of lawful impediment is implicated are not liable to be re-examined before the Board.

It deserves to be attentively considered, that there is a material difference between the sixth and seventh articles of the treaty of amity in relation to the losses and damages submitted to arbitration by those two articles, as from their supposed similarity, the former may be executed in a manner very injurious to the United States.

The source or foundation of the sixth article is the operation of legislative acts contrary to the treaty of peace, which *had* existed, and *had* produced certain losses and damages to British creditors, for which compensation could not be obtained in the ordinary course of justice when the treaty of amity took effect.

The source or foundation of the seventh article is the irregular captures, or *condemnations* of the vessels and other property of American citizens under colour of authority or commissions from his Britannic majesty.

The former article represents, that the complaints of the British subjects were against the *laws* which had impeded the recovery of their debts. The latter article represents the complaints of the American citizens were against illegal captures or *condemnations*. The expression used in the former article is "operation of lawful impediments," that is to say, impediments of law or impediments of legislative acts. The expression used in the latter, is "irregular or illegal captures or *condemnations*," that is to say judicial proceedings and sentences.

The sixth article of the treaty of amity was not intended to enlarge the rights of British creditors beyond what they were under the treaty of peace by relieving against the judgments of the courts of justice upon the real merits of the demands in cases where no question of lawful impediments had arisen; but complaints against judgments of courts unconnected with laws contrary to the treaty of peace, are not submitted to arbitration and cannot be redressed.

The sixth article does not refer to the seventh in any particular; nor has the seventh any reference to the sixth in relation to the *subject matter of submission*, although

in the second section of the seventh article there is a reference to the sixth as to the manner of constituting a Board and of receiving testimony; consequently the construction of the sixth article is not to be influenced in any degree by the seventh article in relation to the question of re-examining judgments of courts of justice between British subjects and American citizens, in which no question of *lawful impediment* has been or could be made; and which were rendered upon the merits of the demands, independent of any laws contrary to the treaty of peace.

In the resolution of the Board on the question of war-interest in Cunningham's case it is stated, that in deciding against an objection to the payment of war-interest, they do not preclude, but necessarily save all objections to the payment of interest which may arise out of the contract, or *other special circumstances of the case*.

The foregoing observations state a ground of defence consistent with that resolution which had been made concerning claims arising out of debts contracted in Virginia; the legislature of which State in the opinion of the Board, had passed laws which impeded the recovery of British debts. During the existence of such lawful impediments in that State, (the period of which the Board has not yet decided) it is admitted that interest on the bonded debts is justly due, and if not obtainable from the debtors, should be paid by the United States.

The defence here meant to be taken is created by the *special circumstances of the case*; and is no more confined to a claim for interest than to a claim for principal, but is equally applicable to both principal and interest. It is grounded on this proposition, that it is *indispensable*, on the part of the claimant, to shew that the loss for which he applies for compensation, has proceeded directly or indirectly from a *legislative act* in violation of the treaty; otherwise the case is not submitted to the jurisdiction of the Board. In the claim of Charles Osborne, no such legislative act has been or can be produced, and therefore the agent for the United States relies that the Board will dismiss the claim, as not being within the 6th article of the treaty of amity.

JOHN READ, JUN.

Agent general for the United States.

7th June, 1799.

To

To the Commissioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majesty and the United States of America.

The Memorial of William Shermer, of the Kingdom of Great Britain, Heir, Executor and Residuary Legatee of Richard Shermer, late of Higleworth, in the County of Wilts, in the Kingdom of Great Britain.

RESPECTFULLY SHEWETH,

THAT the said Richard Shermer was, and during his life continued, and your memorialist is and from his birth has been a subject of his Britannic Majesty.

Your memorialist further begs leave to state and shew that John Shermer, late of Blisland Parish, New Kent County, Virginia, deceased, on the 11th day of June 1766, made his last will and testament in writing, in due form of law which was duly and legally proved after his death, to wit—On the 13th of February 1775, in which he devised and bequeathed the use and profits of the whole of his estate real and personal, to his wife during her natural life, and after death he devised the same to be equally divided between whoever his said wife should think proper to make her heir, and his brother Richard Shermer who survived the said testator, and he appointed his said wife executrix; and Truston James, Dudley Richardson, George Booth and Thomas Booth, executors of the said will, with power and directions to sell the said estate after the decease of his said wife, as by the said last will and testament, a copy whereof is annexed will appear. Your memorialist further begs leave to state and shew that Ann Shermer, the wife of the said John Shermer, survived the testator six days, and on the 15th day of January 1775, she departed this life intestate, and without having made any gift, or appointment whatsoever, in consequence of the power given her in and by the said will.

Your memorialist further begs leave to state and shew that afterwards, to wit—On the 13th day of February 1775, the will of the said John Shermer was duly proved, the other executors therein named, qualified as such, and soon after proceeded to sell the whole estate of the said testator, to the amount of eleven thousand pounds and upwards on credit, taking bonds with security, payable the 1st day of May, 1776.

Your

Your memorialist further states, avers and respectfully insists, that by the devise aforesaid, nothing more than a life estate passed to the said Ann Shermer, with a power to make an heir or heirs; that an act of her own was absolutely necessary to be performed to create or designate the person or persons who should succeed to that part of the said John Shermer's estate, over which such power was given to her, that having omitted, neglected or refused to exercise such power, the said estate, on her decease, by the law of England which in this case was then the law of Virginia, became the sole property of the said Richard Shermer, father of your memorialist and elder and only brother and sole heir at law of the said John Shermer, and the said surviving executor of the will of the said John Shermer, became trustee for the benefit and behoof of the said Richard; and the purchasers of the said estate and their sureties were the real and bona fide debtors of the said Richard.

Your memorialist further shews, that notwithstanding the whole proceeds of the said estate was justly due to the said Richard Shermer, the said executors divided and distributed £5,372 19 8½ Virginia currency, one half of the proceeds of the said estate among the next of kin of the said Ann Shermer, which distribution has been ratified by a decree of the high court of chancery, affirmed by the court of appeals of Virginia, in a suit brought by your memorialists against the surviving executor of the will aforesaid, and the representatives of the next of kin of the said Ann Shermer, which decree is a lawful impediment since the peace, preventing your memorialist from recovering a debt bona fide, contracted before and still justly due and owing to your memorialist as representative of his deceased father.

Your memorialist further begs leave to state and shew, that Dudley Richardson, one of the executors of the last will of the said John Shermer and attorney in fact to the said Richard Shermer, was compelled by the laws of Virginia to receive other part of the debts aforesaid, justly due to the said Richard Shermer, amounting to £2677 2 6 Virginia currency, principal, and £199 17 6½ interest, in the paper currency of the United States, depreciated to a great degree, instead of gold and silver currency, part of which he loaned to other citizens of Virginia, and has since been recovered according to a scale of depreciation established after the said loan, and other parts amounting to £1546 10, he deposited in the treasury of Virginia, and obtained therefor a certificate worth one pound thirteen shillings, as will appear by his account annexed to the decree aforesaid, and by a general statement hereunto annexed.

And your memorialist further states, that although neither the United States or the State of Virginia have redeemed the said paper, and although the original debtors cannot be now made to pay the difference between the real and nominal sums paid by them in discharge of a bona fide specie debt contracted before the peace, still the said Dudley Richardson has been credited to the full nominal amount of the said sums, as if they were specie, and has been exonerated and discharged, and by law is exonerated and discharged from accounting with your memorialist otherwise than by delivering the said certificate.

Your

Your memorialist therefore avers, that by reason of the decree aforesaid, he is prevented from recovering, and has totally lost the principal sum of £7473 11 6½ Virginia currency, and £8878 8 3¼, the interest thereon calculated to the first of May 1798, for which two sums and the interest since accrued and to accrue; he prays this his claim may be received, and that such award may be made thereon as equity and justice shall require.

WILLIAM MOORE SMITH,

General agent for claimants.

20th November, 1798.

To the Commissioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majesty and the United States of America.

The Answer on the part of the United States to the Memorial and Claim of William Shermer, Heir, Executor and Residuary Legatee of Richard Shermer, deceased.

THE memorial represents, that John Shermer the brother of the said Richard Shermer, resided in Blisland parish, new Kent county in Virginia, where he intermarried with Mrs. Ann Read. That on the 11th June 1766, the said John Shermer made his last will and testament, which was proved on the 13th February 1775. By his will he devised to his said wife the rents and profits of his whole estate during her life, and after her death he devised the same to be equally divided between whomsoever his said wife should appoint for that purpose, and his brother Richard Shermer, who gave a power to the executors to sell the estate after the death of his wife.

That Mrs. Shermer died on the 13th January 1775, six days after her husband, without making any appointment under the power given by his will.

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That

That his executors, Thruston James, Dudley Richardson, George Booth and Thomas Booth after probate of the will, sold the whole estate amounting to £11,000 and upwards on credit, and took bonds with security, payable 11th May 1776.

That by the devise aforesaid, nothing passed by the will of John Shermer to his wife but a life estate with a power to make an heir or heirs. That having neglected to do this, the estate on her decease became the sole property of the said Richard Shermer, the father of the claimant for whom the surviving executor was a trustee.

That although the whole of the said estate was the property of Richard Shermer, the executors distributed among the next of kin of the said Ann Shermer £5372 19 8½ Virginia currency, which was one half of the proceeds of the said estate, which distribution has been approved by a decree of the high court of chancery, and affirmed in the court of appeals in Virginia, in a suit brought by the claimant against the surviving executor and other persons interested in the distribution, which decree the claimant insists is a lawful impediment since the peace, preventing the recovery of a debt theretofore contracted, which is still owing to the claimant.

The memorial further states, that Dudley Richardson one of the executors of John Shermer, as the attorney in fact to the said Richard Shermer, was compelled by the laws of Virginia, to receive as attorney to the said Richard Shermer, other part of the debts due to Richard Shermer amounting to £2677 2 6 principal, and £199 17 6½ interest in paper currency, part of which he loaned to citizens of Virginia, which has since been recovered according to the scale of depreciation; another part amounting to £1646 10 0 he deposited in the treasury of Virginia, and obtained a certificate worth £1 13 0.

That the said Dudley Richardson, has been discharged from accounting with the claimant, for the difference between the real and nominal amount, having been credited to the full nominal amount of the said sum as if paid in specie.

That by the said decree he has totally lost £7473 11 6½ Virginia currency, and £8878 8 3½ the interest thereon to the 1st May 1798, for which he prays for an award, and such further sum as equity and justice may require.

This claim is made on the United States for £5372 19 8½ which was one half of the amount of the sales of John Shermer's estate, made under the directions of his will, after deducting £116 16 11½ for plate left Mrs. Shermer, which sum of £5372 19 8½ has since been decreed to belong to the legal representatives of Mrs. Shermer, by the high court of chancery of Virginia, and the decree affirmed in the court of appeals in that State.

The

The claim is also made for the further sum of £2677 2 6½ received by Dudley Richardson as agent for Richard Shermer in May 1776, and £199 17 6½ for interest on that sum also received by him. Of this £1161 19 8 is stated to have been loaned in 1777 and 1779, for the benefit of Richard Shermer, and £1646 10 was paid in 1782, into the treasury of Virginia on his account, which with the sum of £82 6 6 charged for commissions on that payment, will leave a balance due in paper money to the executor, of £13 16 1 as appears from the executor's account filed in chancery, and which accompanies the claim.

The following circumstances appear from the answer of Dudley Richardson to the bill of the claimant exhibited 3th November 1789, and in answer to the amended bill filed in August 1789. That John Shermer had acquired the greater part of his fortune by his intermarriage with his wife Ann, that he had frequently declared in the presence of the said Dudley Richardson, that if he out-lived his wife he would divide one half of his estate among her relations, in the manner she should think most proper. That the said Dudley Richardson shortly after the death of the said Ann Shermer, having consulted with two of the most eminent counsel then in Virginia on the will of John Shermer, they gave it as their opinion that the representatives of Mrs. Shermer were entitled to a moiety of John Shermer's estate. That he wrote to Richard Shermer, enclosing him the will, and copies of the opinions, with the supposed amount of John Shermer's estate. That shortly after he received a letter of attorney from Richard Shermer, with instructions to receive and collect *his proportion* of John Shermer's estate. That in consequence of the letter of attorney, the said Dudley Richardson divided the estate of John Shermer with the other executors, and received for the said Richard in bonds bills and accounts, £5372 19 5½ and paid the other legatees their respective proportions. That the said Dudley Richardson undertook to collect the proportion of the estate belonging to Richard Shermer, with intention to make remittances to him, which he was unable to do owing to the war. That a considerable loss has happened thereon from depreciation in paper money. That having taken the opinion of counsel and communicated the same to the said Richard Shermer, who not only acquiesced therein, but directed his *proportion* to be collected, he conceived he had acted according to law in dividing the estate. That Richard Shermer never claimed more than a moiety, although he received a letter from him in the year 1783, by the hands of the present claimant whom he saw frequently in that year, and who also never hinted to the said Dudley, that there was any claim but to a moiety set up by his father. That the representatives of Ann Shermer were numerous, and in dispersed situations, and that great alteration of property had taken place among them since the division of the estate.

On the 7th September 1792, this cause came on to be heard, on the bills, answers, exhibits and examinations of witnesses, and was then argued by counsel. On consideration whereof, the court gave it as their opinion, that in the devise to his wife by the testator John Shermer, stated in the bill, the words "during her
"natural

"natural life" ought not to be applied to that moiety of his estate of which he empowered her to *dispose*, because such application would be *inconsistent* with his *intention manifestly indicated* by giving her *such power* that she should have and *interest* in that moiety which would continue after her death, namely, the *absolute* property, but ought to be confined to the other moiety which he gave to his brother Richard Shermer, and in which he intended her interest should continue no longer than she should live, and consequently that the plaintiff is not entitled to the wife's moiety, and therefore doth adjudge, order and decree, that the bill of the plaintiff claiming the last mentioned moiety be dismissed, as it is accordingly hereby so far dismissed; and do further order, that the defendant Dudley Richardson settle an account of his administration, &c.

On the 18th October 1794, the decree of the court of chancery was affirmed in the court of appeals.

The deliberate decree of the chancellor of Virginia on the *construction* of a *devise* independent of any *law* operating upon the rights of British subjects and without any reference to the national characters of the parties, which has been affirmed in the court of appeals, is represented as an *impediment* contrary to the treaty of peace.

As to so much of this claim as seeks relief against this decree, the agent for the United States rests the defence on two grounds. 1st. That judgments or decrees of competent courts on the real merits of the controversy, unconnected with the *national* character of the parties, and where no question concerning the operation of lawful impediments, that is to say, impediments of *legislative acts* has been involved, are not liable to be re-examined before this Board, inasmuch as such cases are not within the meaning of the 6th article of the treaty of amity; and upon this point the agent prays leave to refer the Board to the answer in the case of Charles Osborne. 2d. That the decree in relation to the question whether Richard Shermer was entitled to the whole, or to the moiety of the testator's property and estate, is just in itself and such as a court of equity ought to have decreed.

The division of the estate of John Shermer was made in 1776, in consequence of the opinion of two eminent counsel, that such was the intention of the testator, which opinion had been sent to him, with the will of John Shermer, from which he obtained all the information that Dudley Richardson possessed, and in which opinion he acquiesced. After this he appointed Dudley Richardson his attorney in fact, as to his moiety of his brother's estate. There was no change in his opinion as to the operation of the devise after the war, or during his life time; but after his death the present claimant who is his son, filed the bill on which the foregoing decree was made.

Upon

Upon the bill and answer with the exhibits and proofs; the chancellor considered the will of John Shermer intended one half of his estate should go to the heirs of his wife. This disposition was consistent with the *principles of equity* and comported with the *intention* of John Shermer. The greater part of his estate had come with his wife, and to admit her representatives to an equal share with his own in that estate, was natural to a person sensible of those duties, which a regard to the sources from which his property was derived, impose. On the face of the will, distinct from any proofs, the intention of the testator is *plain* and *manifest* and not to be misunderstood. The power given to her in the will, to dispose of a moiety of the estate devised to her, among her family, shews that it was the intention of the testator that that portion should be distributed among her kindred, and not among his. It is a settled rule of law that where the *intention* is *plain* it ought to controul the legal operation of the words in a will—2 *Peere Williams* 741. The intention of a testator is always to govern, unless it is opposed to some fixed and settled rule of law; and the intention of John Shermer, collected from the will, is not opposed by any rules of law. A similar decree, it is believed, would have been made on this will by the court of chancery in England.

The remaining part of the claim is for £2877 0 0½ received in paper money by Dudley Richardson as agent, under the power given him by Richard Shermer, part of which the agent loaned on bonds and the remaining part he paid into the treasury of Virginia. The agent for Richard Shermer was appointed with full power to manage his concerns. Under that power he received and paid money, and gave acquittances, and exercised the same authority which Richard Shermer could have exercised had he been present. Under such circumstances the receipts and loans are binding on the creditor, as if the former had been accepted, and the latter advanced by himself. It was voluntary on the part of the claimant's ancestor, to have an agent in Virginia authorized to receive his debts, and to loan the monies so received. The payments were made and the debts satisfied, according to the laws of the country where they were contracted, and to be paid, by the payment of the debtor to the authorized agent of the creditor, who had accepted the same and given a final discharge for the old debts, and who voluntarily released them.

With respect to the loans, they were in paper money, and the specie value at the time of these loans has been fully paid, and to no more is there a just title.

This part of the claim being for depreciation, it is contended not to be within the meaning and intent of the treaties, for the reasons which have been submitted to the Board in the case of Dulany, to which the agent for the United States, that he may avoid repetition, prays leave to refer.

On the construction of the treaties, on the claim for interest, on the jurisdiction of the arbitrators, and other matters for the consideration of the Board, the agent
for

for the United States respectfully refers them to the arguments heretofore laid before the Board.

JOHN READ, JUN.

Agent general for the United States.

7th June, 1799.

Extract from the Answer on the part of the United States to the Claim of William Cunningham & co.

THE United States and his Britannic majesty have constituted by mutual consent an extraordinary tribunal for hearing and deciding the special cases contained in the 6th article of the treaty of 1794. As the cognizance of this tribunal is expressly limited to special cases, nothing can be more indispensably requisite than to understand the limits which are set to it. In arbitrations between man and man under the municipal regulations of a State, it is a rule that the arbitrators ought not to exceed their jurisdiction, and if they do, a remedy may be easily supplied in the ordinary course of justice, for by the civil as well as the common law an award upon a case to which the submission does not extend is void. In arbitrations between nation and nation the same rule prevails that the arbitrators ought not to exceed their jurisdiction, but if they do, there being no common controuling power to correct the error, each nation has a just right to judge for itself, and may justly consider as void every arbitration upon a case out of their limited jurisdiction. This observation is made to impress on the commissioners the primary importance of understanding the limits which are prescribed to them by the terms of the article: For should an error unfortunately occur on this point it may lay a foundation for disappointing all the good consequences that have been expected from the article, and perhaps for renewing the dissensions between the two nations, which it is so desirable should be forever composed.

In expressing on the part of the United States their opinion, that it is necessarily reserved to each nation to determine for itself whether an award is within the sphere of the submission, it is not meant to assert that the arbitrators are not to decide for themselves whether a case is cognizable before them or not, but it is meant to assert
that

that though they shall decide a case to be cognizable before them, yet if it appears to either nation that it is not, either has a just right to disregard the award. If this were not so, there would be no difference between a limited and an unlimited submission. If this were not so, the commissioners might determine any and every question upon any and every subject which concern the two nations. Though this opinion is so reasonable in itself that it need not be supported by any authority, yet what a learned modern writer has said upon this subject deserves to be noticed. Vattel relative to the arbitration of national disputes observes, " It may then happen, as in the example just alledged, that the arbitrators may exceed their power, and pass their judgment on what has not been really submitted to their decision : And being called to judge of the satisfaction a State ought to make for an offence, they may condemn it to become subject to the offended. Certainly that State never gave them so extensive a power, and their absurd sentence is not binding. To avoid all difficulty, and to take away every pretence from bad faith, it is necessary to determine *exactly in the compromise, the subject of the dispute, the respective and opposite pretensions, the demands of the one, and the oppositions of the other.* This is what is submitted to arbitrators, and upon this they promise to adhere to their judgment. If then their sentence is confirmed within these bounds, it is necessary to submit to it. It cannot be said that it is manifestly unjust, since it is pronounced on a question which the dissention of the parties renders doubtful, *and which has been submitted as such.* In order to be free from *such* a sentence, it should be proved by indubitable facts, that it was produced by corruption, or a flagrant partiality."—Book 2d, section 329.

Hence it appears if a case within the submission is decided by arbitrators, even though the sentence is conceived to be unjust it ought to be executed unless proceeding from corruption; but if the case be out of the submission, then the sentence is not obligatory.

When the treaty of 1794 was formed, the courts of justice in all the States of America were open. This was well known to the negociators on both sides as well as to both nations. But there were some particular and extraordinary cases in which complete justice was not attainable in the ordinary course of justice, and to decide these a particular and extraordinary tribunal was instituted. The treaty having been made between two nations who speak the same language, who are alike in manners and morals, who till lately were united under the same empire, and whose principles and ideas of justice are derived from the same sources, it may be conceived the same interpretation in both countries, and especially that there was no disagreement respecting the meaning of the 6th article among the commissioners who are selected to decide upon it. In the proposed discussion much aid was sought by the agent for the United States, from the rules and principles of law recognized by the judicial determinations of the British courts, whose pure and wise administration of justice for many ages, while it has been the source of happiness to the people of that country, has also been an object of the highest admiration among mankind.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 18th April, 1798.

PRESENT,

Mr. MACDONALD,

Mr. RICH,

Mr. FITZSIMONS,

Mr. GUILLEMARD.

In the Case of WILLIAM CUNNINGHAM, and others.

THE answer of the United States signed by their agent, having in this case been printed and laid before the Board, ORDERED—That the general agents for claimants or attorney for these claimants, have leave to fee and reply to the same within three weeks; but with the exception of the introductory argument "to impress on the commissioners (as it is there said) the primary importance of understanding the limits" of their duty, and instructing them, on the authority of Vattel, and with reference to a supposed case of manifest and intentional wrong, in the expediency of taking care that they do not "renew the dissensions between the two nations," by deciding in a manner so palpably "*absurd*," or so clearly proceeding from "*corruption, or flagrant partiality*," as to entitle "*either nation to disregard the award*." The Board make no further animadversion on the above argument than thus to state its import, and prohibit all allusion to such topics in future. They know no policy but that of justice, and look forward to no consequence but the consciousness of having done their duty.

ORDERED—That the reply in this case be printed; that this order be fully recited, and copies hereof served upon the agents for both parties.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY

AGENT

AGENT GENERALS' OFFICE,

Philadelphia, 26th April, 1798.

THE agent for the United States encloses to the Board a letter addressed to him from the Attorney General of the United States. It relates to their order of the 18th instant, which prohibits all allusions in future to the jurisdiction of the arbitrators and directs the claimant to take no notice of this argument. As it is of the utmost importance to the United States clearly to understand this prohibition, their agent respectfully request of the Board such explanation of the order as they may please to give.

JOHN READ, JUN.

Agent general for the United States.

To the Commissioners under the sixth article of the Treaty of Amity.

ATTORNEY GENERAL'S OFFICE,

Philadelphia, 24th April, 1798.

SIR,

I HAVE read and considered the order of the Board of Commissioners bearing date the 18th of this month, relative to that part of the argument which in the case of William Cunningham and company, related to the limited jurisdiction of the arbitrators. I did not suppose that the observations which were made upon this point could have been misapprehended in the manner they appear to have been by the Board, and I yet indulge the hope that when the quotation from Vattel shall be understood by them, as it is by me, that it will not be thought in the least degree

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degree exceptionable. I understand the quotation to embrace two cases, in which the Civilian thinks the award of national arbitrators void. One whereon a matter submitted to them, the award shall be flagrantly unjust or absurd, or shall manifestly proceed from corruption; the other whereon a matter not within the terms of the submission, the arbitrators shall erroneously undertake to make an award, though it be neither unjust nor absurd, nor proceeding from corrupt motives. The former is not contemplated in any part of the argument to be possible, and the latter only is the case to which the quotation is applied, and so it was hoped the observations would have been understood. I trust this will serve to shew, that the import of the above argument has not been correctly stated by the Board.

I have always entertained the opinion relative to every tribunal for determining disputes and controversies of a civil nature, that it was allowable to enquire into the limits of its jurisdiction, and I have thought too that the objection to jurisdiction should in every case be made as early as possible, because if sustained it would preclude the trouble and the expence of further investigation. This remark has been made because the Board in their order having directed the claimant to take no notice of this argument, and having represented how they understand the import of it as well as the application of the quotation, have proceeded to "prohibit all allusions to such topics in future." I am at a loss how the Board expect this prohibition is to be understood. Does it mean if a claim shall be made before the Board, which the agent for the United States shall deem out of the submission of the 6th article of the treaty of amity, commerce and navigation, that he shall be prohibited from endeavoring to shew that it is not submitted to the Board, and therefore that an award in such case ought not to be made against the United States, and if made against them may be justly regarded by them as void. Does it mean that it is the opinion of the Board that whatever award shall be made by them concerning a debt due to a British subject from an American citizen, contracted before the war, will be obligatory on the United States, and that it belongs not to the Board to consider what the United States may think of their awards.

This topic I formerly viewed and yet view of the utmost importance to the United States, and I therefore conceive it my duty to instruct you to request of the Board some explanation of their order, and to transmit to me whatever they may please to give.

I am Sir, very respectfully, your obedient servant,

7 NOV 1800 CHARLES LEE.

To JOHN READ, Esq.

Agent for the United States relative to British debts.

COMMISSIONERS'

COMMISSIONERS' OFFICE,

Philadelphia, 27th April, 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

A REPRESENTATION from the agent for the United States, and a letter from the attorney general requesting an explanation of the order of the Board in the case of Cunningham and others, dated the 18th current, having been read and the said order having been also read,

RESOLVED—That the terms of the said order as it appears to the Board, are clear and explicit and the general topics therein referred to (and all allusions to which in future is thereby prohibited) have no connection whatever with the primary and important question, how far a particular case is within the intent and meaning of the treaty, or to use the words of the representation that the agent for the United States is not thereby prohibited from endeavoring to shew that a claim is not submitted to the Board.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

1877

Commissioner of the
General Land Office

Washington

MR. MICHAEL
MR. BENT
MR. TERRY
MR. GUNN

Dear Sir: I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the land in the State of California, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Very respectfully,
J. M. GUNN
Commissioner of the General Land Office

Very truly,
J. M. GUNN